IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC.,	)	CV-14-5344-BLF
	)	
PLAINTIFF,	)	SAN JOSE, CALIFORNIA
	)	
VS.	)	DECEMBER 2, 2016
	)	
ARISTA NETWORKS, INC.,	)	VOLUME 7
	)	
DEFENDANT	)	PAGES 1310-1588
_____	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                          BY: DAVID A. NELSON
                          500 WEST MADISON STREET, SUITE 2450
                          CHICAGO, IL 60661

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
                          BY: SEAN PAK
                          50 CALIFORNIA STREET, 22ND FLOOR
                          SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
                             CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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1      APPEARANCES (CONTINUED)

2      FOR THE DEFENDANT:        KEKER & VAN NEST, LLP
                                 BY:   ROBERT ADDY VAN NEST
3                                      BRIAN FERRALL
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4                                      ELIZABETH K. MCCLOSKEY
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2   SAN JOSE, CALIFORNIA   DECEMBER 2, 2016

08:30:44 3   P R O C E E D I N G S

08:30:44 4   (COURT CONVENED AT 8:30 A.M.)

08:30:45 5   THE COURT: GOOD MORNING, EVERYONE. PLEASE BE

08:30:51 6 SEATED. ALL RIGHT. WE ARE ON THE RECORD OUTSIDE THE PRESENCE

08:30:54 7 OF THE JURY.

08:30:55 8   WE ARE GOING TO GO OVER SOME OF THE OBJECTIONS THAT WERE

08:30:58 9 FILED YESTERDAY. LET ME START WITH THE OBJECTIONS FILED BY

08:31:02 10 ARISTA. IT APPEARS THAT VIRTUALLY EVERYTHING HAS BEEN

08:31:06 11 RESOLVED?

08:31:07 12   MR. VAN NEST: I THINK THE WORD "VIRTUALLY" IS

08:31:09 13 OPERATIVE THERE. IS THERE ANYTHING REMAINING ON --

08:31:14 14   MR. FERRALL: EVERYTHING HAS BEEN RESOLVED, AND --

08:31:16 15   THE COURT: EVEN THE TWO SLIDES?

08:31:17 16   MR. FERRALL: EVEN THE TWO SLIDES. WE JUST WORKED IT

08:31:20 17 OUT THIS MORNING.

08:31:21 18   THE COURT: OH, THAT'S GREAT.

08:31:22 19   MR. FERRALL: AND JUST FOR THE RECORD AND SO

08:31:25 20 YOUR HONOR KNOWS WHAT'S COMING, THERE'S SOME EVIDENCE FROM

08:31:29 21 MR. SADANA THAT HAS NOT BEEN PUT IN.

08:31:31 22   WE'VE AGREED THAT CISCO CAN PUT THAT DEPOSITION EVIDENCE

08:31:36 23 IN. EVEN AFTER ITS CASE IN CHIEF CLOSES, WE WON'T OBJECT TO IT

08:31:42 24 IN EXCHANGE.

08:31:43 25   THE COURT: GREAT.

08:31:44 1   MR. FERRALL: WE HAVE A WITNESS WHO MAY NOT BE

08:31:46 2   AVAILABLE UNTIL FRIDAY, AND THEY'VE AGREE THEY WON'T OBJECT TO

08:31:49 3   OUR CALLING THAT WITNESS, MR. VOLPI EVEN ON FRIDAY, EVEN IF OUR

08:31:57 4   CASE IN CHIEF IS CLOSED BY THEN.

08:31:57 5   THE COURT: GOOD WORK. MR. PAK, YOU AGREE?

08:31:58 6   MR. PAK: WE AGREE.

08:31:59 7   THE COURT: ALL RIGHT. THAT'S A GOOD RESOLUTION

08:32:02 8   THEN. I'M GLAD TO HEAR THAT.

08:32:03 9   THEN ON THE CISCO'S OBJECTIONS, I RECEIVED NO FOLLOWUP

08:32:07 10   FROM THE INITIAL MOTION. WAS ANY PROGRESS MADE?

08:32:11 11   MR. VAN NEST: WHICH OBJECTIONS ARE YOU REFERRING TO,

08:32:13 12   YOUR HONOR?

08:32:13 13   THE COURT: WELL, CISCO FILED A THREE-PAGE BRIEF AND

08:32:16 14   A LIST AS LONG AS MY ARM OF EXHIBITS.

08:32:20 15   MR. VAN NEST: THE SITUATION IS WE ARE STILL WORKING.

08:32:23 16   I THINK WE ARE NARROWING THOSE. I THINK WE WILL MAKE PROGRESS.

08:32:26 17   WE WILL NOT BE PRESENTING MR. DUDA TODAY, AND, THEREFORE,

08:32:29 18   HOPEFULLY ON MONDAY YOU WILL HAVE A MUCH MORE NARROW LIST TO

08:32:33 19   WORK WITH.

08:32:33 20   THE COURT: I APPRECIATE THAT.

08:32:34 21   HOWEVER, LET ME TELL YOU, MR. PAK, I WON'T TAKE A SECOND

08:32:37 22   MOTION FROM YOU, I WON'T HAVE TWO PILED UP. SO THIS IS IT FOR

08:32:40 23   MONDAY.

08:32:41 24   MR. PAK: ABSOLUTELY, YOUR HONOR. WE WILL WORK TO

08:32:43 25   NARROW THE DISPUTES, NOT ADD MORE.

08:32:45 1   THE COURT: I WAS SURPRISED NOT TO HEAR ANYTHING, SO

08:32:47 2   THAT'S A GOOD ANSWER TO IT. AND YOU'VE GOTTEN -- YOU'VE HAD TO

08:32:51 3   GET AHEAD TO MEET MY DEADLINES, AND I GREATLY APPRECIATE THAT.

08:32:55 4   MR. VAN NEST: WE DID THAT.

08:32:56 5   THE COURT: OKAY. THEN ARE WE DONE?

08:32:59 6   MR. KRISHNAN: YOUR HONOR, THERE'S ACTUALLY AN ISSUE

08:33:01 7   FROM YESTERDAY.

08:33:02 8   SO AS YOU MIGHT RECALL YESTERDAY THERE WERE A COUPLE OF

08:33:04 9   ISSUES WE DON'T HAVE TIME FOR. YESTERDAY THERE WERE A COUPLE

08:33:12 10   OF WITNESSES, AND I THINK THE ONLY ONE THAT'S REALLY

08:33:14 11   OUTSTANDING IS DR. JEFFAY. HE'S GOING ON TODAY.

08:33:17 12   THE OBJECTIONS WERE FILED TWO DAYS AGO TO BE HEARD

08:33:20 13   YESTERDAY, BUT THOSE ARE STILL PENDING.

08:33:38 14   THE COURT: I HAVE, IN YOUR FILING FOR, THAT WAS FOR

08:33:42 15   YESTERDAY FOR DECEMBER 1, OBJECTIONS TO SOURCE CODE FILES NEVER

08:33:46 16   DISCUSSED BY DR. JEFFAY?

08:33:49 17   MR. KRISHNAN: CORRECT.

08:33:49 18   THE COURT: AND EXPANDING HIS OPINIONS ON THOSE FILES

08:33:52 19   AT TRIAL. IS THAT -- OF COURSE, THAT'S THE TOPIC AND OF COURSE

08:33:56 20   YOU'VE WRITTEN QUITE A BIT HERE.

08:33:58 21   MR. KRISHNAN: RIGHT. THERE WAS A LITTLE OVER A PAGE

08:34:01 22   OF OBJECTIONS.

08:34:02 23   THE COURT: WELL, I THINK YOU PROPERLY ARGUED THAT

08:34:06 24   SOURCE CODE IS NOT AT ISSUE HERE SO I DON'T KNOW WHAT THE

08:34:08 25   PURPOSE OF HIM DISCUSSING SOURCE CODE IS.

08:34:11 1   MR. JAFFE: SURE. SO GOOD MORNING.

08:34:15 2   THE COURT: SO DR. JEFFAY PROVIDED -- LET ME JUST SET

08:34:17 3   THE CONTEXT -- PROVIDED A DETAILED SOURCE CODE TRACE.

08:34:20 4   SO HE SPENT THREE SEPARATE DAYS, FULL DAYS, REVIEWING

08:34:24 5   ARISTA SOURCE CODE. IT WAS DETAILED SOURCE CODE ANALYSIS IN

08:34:27 6   HIS REPORT. YOU CAN SEE DETAILED SOURCE CODE ANALYSIS IN

08:34:30 7   ARISTA'S REPORT. THAT'S WHAT THESE PATENT CLAIMS ARE ABOUT IS

08:34:33 8   ANALYSIS OF THE SOURCE CODE.

08:34:34 9   THE COURT: OKAY.

08:34:35 10   MR. JAFFE: AND THERE IS SOURCE CODE THAT THEY DON'T

08:34:37 11 OBJECT TO US BRINGING IN. SO THERE'S GOING TO BE SOURCE CODE

08:34:40 12 RELEVANT FOR THE PATENT CLAIMS.

08:34:42 13   THE DISPUTE IS OVER CERTAIN SOURCE CODE THAT'S CITED ONLY

08:34:48 14 IN THE APPENDIX TO DR. JEFFAY'S REPORT.

08:34:51 15   THE COURT: YEAH.

08:34:51 16   MR. JAFFE: SO DR. JEFFAY, WE HAD A DETAILED CODE

08:34:58 17 TRACE IN THE BODY OF HIS REPORT AND THEN HE HAD CITED TO ALL

08:35:01 18 THE FILES IN THE END WITH SPECIFIC PIN CITES TO THE LINE

08:35:04 19 NUMBERS.

08:35:04 20   THE COURT: OKAY.

08:35:04 21   MR. JAFFE: WHEN WE DISCLOSED THE CODE TO USE WITH

08:35:08 22 DR. JAFFE HE SAID YOU CITED THESE BY PAGE AND LINE NUMBER BUT

08:35:11 23 YOU DIDN'T DISCUSS THEM IN ENOUGH DETAIL TO PRESENT THEM.

08:35:14 24   AS A COMPROMISE WE ACTUALLY -- WE OFFERED TO DO IT AS A

08:35:23 25 SUMMARY EXHIBIT AS OPPOSED TO ACTUALLY BRINING IN THE FILES TO

08:35:26 1   TRY TO AVOID THIS CONCERN.

08:35:28 2   AND THEY -- THEY INSTEAD JUST FILED A BRIEF AND OBJECTED.

08:35:32 3   SO WE DON'T THINK THAT DR. JEFFAY IS GOING TO GO OUTSIDE

08:35:34 4   THE BOUNDS OF HIS REPORT.

08:35:37 5   THE COURT: ALL RIGHT. WELL, YOU KNOW, I DON'T

08:35:40 6   CONSIDER SOMETHING ABSENT FROM A REPORT BECAUSE IT'S IN AN

08:35:43 7   APPENDIX. IT'S TO PARSE THE REPORT THAT WAY, I THINK, IS

08:35:46 8   OVERLY RESTRICTIVE.

08:35:48 9   MR. KRISHNAN: YOUR HONOR, I DON'T THINK THAT

08:35:49 10   PROPERLY CHARACTERIZES WHAT HAPPENED HERE.

08:35:52 11   SO THERE IS A DETAILED SOURCE CODE TRACE IN DR. JEFFAY'S

08:35:56 12   REPORT, AND ANYTHING THAT HE ANALYZED THAT WAY IS FINE. WE ARE

08:36:02 13   NOT OBJECTING TO THAT AT ALL. HE THEN LISTED SEPARATE SOURCE

08:36:10 14   CODE FILES IN HIS APPENDIX THAT HE DID NOT DISCUSS AT ALL, AND

08:36:12 15   THAT IS THE SOURCE OF THE OBJECTION.

08:36:14 16   THE COURT: I CANNOT GET MY HANDS ON IT. I LOOKED AT

08:36:17 17   IT THE DAY BEFORE YESTERDAY IN TRYING TO SORT THIS OUT, AND IT

08:36:21 18   APPEARED TO ME THAT HIS STATEMENTS IN THE REPORT WERE

08:36:24 19   SUFFICIENT TO COVER WHAT WAS IN THE APPENDIX. AND SO I WILL

08:36:28 20   DENY THE REQUEST TO EXCLUDE, AND YOU HAD THREE REQUESTED

08:36:31 21   RULINGS, THAT WAS YOUR FIRST ONE.

08:36:34 22   MR. KRISHNAN: THAT'S CORRECT.

08:36:34 23   THE COURT: AND I WILL DENY IT.

08:36:36 24   THE SECOND ONE WAS NOT TO ALLOW DR. JEFFAY TO IDENTIFY

08:36:40 25   ANYTHING OTHER THAN EOS AGENTS AS MANAGEMENT PROGRAMS. I'M

08:36:44 1   INCLINED TO GRANT THAT, LOOKING AT HIS REPORT THAT APPEARS TO

08:36:48 2   BE WHAT HE TESTIFIED TO.

08:36:49 3   MR. JAFFE: AND TO BE CLEAR, SO DR. JAFFE IS GOING TO

08:36:51 4   IDENTIFY AGENTS, AS EOS USES THAT TERM. WE ARE NOT GOING TO GO

08:36:54 5   OUTSIDE THE REPORT. OUR ACTUAL DISPUTE IS WITH THE THIRD

08:36:57 6   REQUESTED RELIEF.

08:36:58 7   THE COURT: OKAY. THE THIRD ONE WAS NOT TO IDENTIFY

08:37:00 8   EOS AGENTS AS MANAGEMENT PROGRAMS OTHER THAN THE ONLY ONE THAT

08:37:05 9   HE IDENTIFIED IN HIS REPORT. I'M READING MY NOTES. DID I GET

08:37:09 10   THAT RIGHT?

08:37:10 11   MR. KRISHNAN: THAT'S CORRECT, YOUR HONOR.

08:37:11 12   MR. JAFFE: THAT'S CORRECT, YOUR HONOR. WE DON'T

08:37:12 13   DISPUTE THAT DR. JEFFAY CAN'T IDENTIFY AGENTS THAT HE DIDN'T

08:37:15 14   MENTION IN HIS REPORT. WHAT WE DISPUTE IS THAT THERE'S ONLY

08:37:19 15   ONE IDENTIFIED AND THE ONE THAT THEY QUOTED.

08:37:21 16   AND, IN FACT, IF YOU LOOK AT ARISTA'S EXPERT, DR. CHASE --

08:37:27 17   THE COURT: WHERE WOULD I DO THAT?

08:37:28 18   MR. JAFFE: HE IDENTIFIES, HE LISTS OUT ALL THE

08:37:30 19   AGENTS THAT DR. JEFFAY MENTIONS, SO YOU DON'T HAVE TO TAKE MY

08:37:34 20   WORD THAT HE MENTIONS OTHER AGENTS.

08:37:36 21   THE COURT: I'M SAYING WHERE WOULD I SEE DR. CHASE'S

08:37:39 22   REPORT?

08:37:39 23   MR. JAFFE: I'M HAPPY TO HAND IT UP TO YOUR HONOR.

08:37:42 24   (HANDING.)

08:37:42 25   THE COURT: THAT'S FINE. I BELIEVE THAT YOU FILE --

08:37:44 1   GAVE ME A THUMB DRIVE WITH ALL THE REPORTS ON IT. YOU DO

08:37:47 2   UNDERSTAND THAT THAT WAS A WASTE OF EFFORT BECAUSE I DO NOT

08:37:50 3   OPEN THUMB DRIVES, AND I DO NOT TRY TO READ THOUSAND-PAGE

08:37:53 4   REPORTS.

08:37:54 5   SO THANK YOU FOR HAVING THIS AVAILABLE, BUT IF YOU THINK

08:37:59 6   THAT I HAVE 50 HOURS A DAY TO DO ALL OF THIS, THEN I AM REALLY

08:38:03 7   REGRETTING THAT I HAVE TO DISAPPOINT YOU BUT YOU HAVE 50

08:38:07 8   LAWYERS AND I HAVE ME. SO LET'S KEEP THAT IN MIND.

08:38:19 9   THEN I'M LOOKING AT PARAGRAPH 103, IS THAT WHAT YOU ARE

08:38:22 10   POINTING ME TO?

08:38:23 11   MR. JAFFE: YES, AND THE HIGHLIGHTED PORTIONS IN

08:38:26 12   PARTICULAR. THE REASON I MENTIONED DR. CHASE IS HE PROVIDES

08:38:29 13   THE NAMES OF THE AGENTS THAT DR. JEFFAY IDENTIFIED AND HE

08:38:33 14   PROVIDES PIN CITES TO THOSE. WE JUST WANT TO MAKE SURE WE ARE

08:38:36 15   CLEAR TO MENTION THOSE.

08:38:37 16   THE COURT: OKAY. AND YOUR RESPONSE BY YOUR EXPERT.

08:38:41 17   MR. KRISHNAN: SOME OF THIS WAS WRITTEN UP IN THE

08:38:43 18   PAPERS, BUT I WANT TO MAKE CLEAR WHAT HAPPENED. DR. JEFFAY IN

08:38:46 19   HIS REPORT IDENTIFIED 77 PRESCRIBED COMMANDS.

08:38:49 20   THE COURT: YES.

08:38:50 21   MR. KRISHNAN: AND WITH RESPECT TO ONE OF THOSE, HE

08:38:53 22   IDENTIFIED A MANAGEMENT PROGRAM.

08:38:54 23   THE COURT: ALL RIGHT.

08:38:55 24   MR. KRISHNAN: AT HIS DEPOSITION I WENT DOWN THE LIST

08:38:58 25   WITH HIM AND ASKED HIM WHAT ARE THE MANAGEMENT PROGRAMS FOR

08:39:03 1   EACH ONE OF THESE PRESCRIBED COMMANDS.

08:39:05 2   THE COURT: UH-HUH.

08:39:06 3   MR. KRISHNAN: FOR MOST OF THEM HE COULD NOT ANSWER.

08:39:09 4   THE COURT: RIGHT. I SAW THAT HAD HIS REPORT.

08:39:12 5   MR. KRISHNAN: AND SOME OF THEM HE SAID I THINK IT'S

08:39:14 6   THIS, I THINK IT'S THAT, AND I CAN'T DO IT WITHOUT LOOKING AT

08:39:17 7   THE SOURCE CODE.

08:39:18 8   SO WHAT I DON'T WANT IS FOR HIM TO GET ON THE STAND TODAY

08:39:20 9   AND THEN IDENTIFY THE MANAGEMENT PROGRAMS WHERE I TRIED TO GET

08:39:22 10   IT OUT OF HIM AT THE DEPOSITION.

08:39:25 11   THE COURT: RIGHT. WELL I'M INCLINED TO GRANT THIS

08:39:26 12   BECAUSE I DID READ -- I MEAN, WAS IT DEPOSITION? YES, I READ

08:39:29 13   THE DEPOSITION TRANSCRIPT AND NOT ONLY WAS HE EQUIVOCAL, HE WAS

08:39:35 14   COMPLETELY FLAT FOOTED IN THOSE RESPONSES. SO I'M SURE HE'S

08:39:39 15   STUDIED UP SINCE --

08:39:41 16   MR. JAFFE: AND TO BE CLEAR YOUR HONOR, WE AREN'T

08:39:43 17   SEEKING TO IDENTIFY THE SPECIFIC MANAGEMENT PROGRAMS THAT

08:39:46 18   MR. KRISHNAN ASKED ABOUT IN THE DEPOSITION. SO DR. JEFFAY

08:39:49 19   IDENTIFIES THE GENERAL CLASS OF AGENTS.

08:39:51 20   THE COURT: OKAY.

08:39:52 21   MR. JAFFE: SO HE'S NOT GOING TO GO OUTSIDE THE

08:39:54 22   BOUNDS OF HIS EXPERT REPORT OR WHAT HE TESTIFIED IN HIS

08:39:57 23   DEPOSITION ABOUT IDENTIFYING THE SPECIFIC AGENTS. IT'S RATHER

08:40:01 24   THE CLASS OF AGENTS.

08:40:02 25   THE COURT: WELL, IT'S STATED THAT WAY. OF COURSE I

08:40:04 1   WILL ALLOW HIM TO TESTIFY WITHIN THE SCOPE OF HIS REPORT AND

08:40:07 2   MR. KRISHNAN IS NOT ASKING FOR ANYTHING ELSE.

08:40:09 3   SO I'M GOING TO ACTUALLY GRANT THIS PART OF THE MOTION AS

08:40:16 4   SUBMITTED WITH THE UNDERSTANDING THAT DR. JEFFAY MAY TESTIFY

08:40:21 5   CONSISTENT WITH HIS REPORT AND HIS DEPOSITION. AND I THINK

08:40:25 6   THAT -- I HOPE THAT'S NOT EQUIVOCAL, BUT I THINK THAT'S REALLY

08:40:29 7   WHERE WE ARE.

08:40:30 8   MR. KRISHNAN: THAT'S ALL WE ARE ASKING FOR,

08:40:31 9   YOUR HONOR.

08:40:32 10   THE COURT: DOES THAT TAKE CARE OF DR. JEFFAY?

08:40:35 11   MR. KRISHNAN: IT DOES, YOUR HONOR.

08:40:38 12   YOUR HONOR, IF I COULD RAISE ONE ADMINISTRATIVE ISSUE WITH

08:40:40 13   RESPECT TO THE SOURCE CODE?

08:40:41 14   THE COURT: YES.

08:40:41 15   MR. KRISHNAN: AS I UNDERSTAND IT CISCO WILL --

08:40:43 16   DR. JEFFAY WILL BE DISCUSSING SOURCE CODE. BUT HE'S --

08:40:46 17   THE COURT: THIS IS ONLY IN RELATION TO THE '526.

08:40:49 18   MR. KRISHNAN: EXACTLY. AND THEY ARE NOT GOING TO BE

08:40:52 19   PUBLISHING IT TO THE ACTUAL SOURCE CODE LINES TO THE JURY. AND

08:40:55 20   SO WE ARE NOT GOING TO ASK THAT THE COURTROOM BE CLEARED OR

08:40:58 21   ANYTHING LIKE THAT, BUT WE WILL BE MOVING TO SEAL THE ACTUAL

08:41:01 22   EXHIBIT.

08:41:01 23   THE COURT: OKAY. AND, OF COURSE, THAT'S FINE. AND

08:41:04 24   YOU KNOW, YOU CAN PROVIDE OMNIBUS SEALING REQUEST LISTING THE

08:41:09 25   EXHIBITS. OF COURSE YOU WILL HAVE TO EXPLAIN IT. IT'S

08:41:12	1	TEDIOUS, BUT I KNOW THAT'S IMPORTANT TO YOUR CLIENT, SO WE WILL
08:41:15	2	DO THAT.
08:41:16	3	MR. KRISHNAN: UNDERSTOOD. THANK YOU, YOUR HONOR.
08:41:17	4	MR. JAFFE: THANK YOU, YOUR HONOR.
08:41:18	5	THE COURT: ALL RIGHT THEN. THE CISCO OBJECTIONS WE
08:41:20	6	WILL HOLD. I WILL EXPECT SIMILAR PROGRESS AS YOU'VE MADE ON
08:41:23	7	THE OTHERS, AND I APPRECIATE THAT.
08:41:26	8	THEN --
08:41:29	9	MR. SANTACANA: THERE'S ONE MORE ISSUE, YOUR HONOR.
08:41:31	10	THE COURT: YES, OF COURSE. GOOD MORNING.
08:41:33	11	MR. SANTACANA: THIS ONE WAS FROM MONDAY, ACTUALLY.
08:41:35	12	THE COURT: LET ME SEE, LET ME PULL THAT ONE OUT.
08:41:38	13	NOW YOU ARE REALLY STRETCHING MY MEMORY.
08:41:41	14	MR. SANTACANA: WE HAVE COPIES HERE, AND I WILL PUT
08:41:43	15	SOME THINGS ON THE SCREEN TO MAKE IT EASIER FOR YOU.
08:41:45	16	THE COURT: MONDAY WAS --
08:41:46	17	MR. VAN NEST: THE 28TH.
08:41:48	18	THE COURT: I HAVE TUESDAY. I'M JUST TRYING TO --
08:41:51	19	NO, YOU WANT FROM THE 28TH?
08:41:53	20	MR. SANTACANA: FROM THE 28TH.
08:41:55	21	THE COURT: OKAY. WELL, LET'S SEE. ALL RIGHT. THIS
08:42:07	22	IS REALLY GOING TO STRETCH MY MEMORY, BUT LET'S SEE WHAT YOU
08:42:10	23	HAVE.
08:42:12	24	MR. SANTACANA: THIS IS A COPY OF THE EXHIBIT THAT WE
08:42:14	25	ARE TALKING ABOUT.

08:42:15   1   THE COURT: THANK YOU.

08:42:16   2   MR. SANTACANA: THIS IS THE --

08:42:18   3   THE COURT: OH, OKAY.

08:42:21   4   MR. SANTACANA: -- INTERROGATORY RESPONSE THAT CISCO

08:42:23   5   PROVIDED LISTING WHO THEY BELIEVE ARE THE AUTHORS OF EACH

08:42:27   6   ASSERTED COMMAND.

08:42:28   7   THE COURT: RIGHT.

08:42:28   8   MR. SANTACANA: AND WE HAD A DISCUSSION ON MONDAY,

08:42:30   9   AND YOU ASKED US TO GO BACK AND LOOK AT SOME EXEMPLARS AND

08:42:34 10   PRESENT THEM TO YOU AND DISCUSS THEM.

08:42:36 11   THE COURT: OKAY. WOW, I REMEMBER SAYING THAT BUT

08:42:38 12   I'M -- OKAY. I'M GOING TO TRY TO COME UP TO SPEED BECAUSE MY

08:42:44 13   MEMORY IS NOT THAT GOOD. ALL RIGHT. AND SO CAN YOU ARTICULATE

08:42:49 14   THE ISSUE AGAIN FOR ME, I'M SORRY.

08:42:51 15   MR. SANTACANA: OF COURSE. THE PRIMARY ISSUE THAT I

08:42:53 16   HAVE TO DISCUSS TODAY, YOUR HONOR, IS THAT MOST OF THE

08:42:57 17   DOCUMENTS THAT SUPPOSEDLY UNDERLIE THIS SUMMARY EXHIBIT ARE NOT

08:43:01 18   ADMISSIBLE.

08:43:03 19   THE COURT: WERE NOT --

08:43:04 20   MR. SANTACANA: ADMISSIBLE.

08:43:05 21   THE COURT: YES, OKAY.

08:43:09 22   MR. SANTACANA: THAT THE EXHIBIT DOES NOT REFLECT

08:43:10 23   ANYTHING OTHER THAN CISCO'S LEGAL CONTENTIONS IN THE CASE WHICH

08:43:14 24   IS WHO THEY BELIEVE THE AUTHOR OF EACH COMMAND IS, WHETHER OR

08:43:17 25   NOT THE DOCUMENT SAYS IT AND WHETHER OR NOT A DOCUMENT HAS BEEN

08:43:20 1   CITED.

08:43:20 2   THE COURT: OKAY.

08:43:20 3   MR. SANTACANA: SO IF WE COULD GET 4789 ON THE

08:43:26 4   SCREEN.

08:43:28 5   I HAVE A COUPLE POINTS I WOULD LIKE TO MAKE BEFORE WE GET

08:43:32 6   TO THE UNDERLYING DOCUMENTS.

08:43:33 7   THE COURT: SORRY. I'M GOING TO LOOK AWAY FROM YOU

08:43:35 8   IF YOU WANT ME TO LOOK HERE OR YOU CAN POINT ME TO A PLACE IN

08:43:39 9   THE WRITTEN ARGUMENT. IT'S EASIER IF I LOOK AT YOU THAN HAVE

08:43:43 10   MY BACK TO YOU.

08:43:44 11   MR. SANTACANA: SO ON PAGE 3 YOU CAN SEE THERE ON THE

08:43:47 12   THIRD, FOURTH, AND FIFTH LINES, THAT KIRK LOUGHEED IS

08:43:50 13   IDENTIFIED AS THE AUTHOR OF THREE COMMANDS.

08:43:53 14   THE COURT: SO THIS IS BANNER LOG IN?

08:43:55 15   MR. SANTACANA: THAT'S RIGHT. THE EARLIEST KNOWN

08:43:59 16   DOCUMENT IS LISTED AS CISCO IOS 10, AND THE DATE LISTED IS

08:44:04 17   1993.

08:44:04 18   ON MONDAY, MR. PAK REPRESENTED THAT CISCO MAKES CISCO

08:44:08 19   IOS 10 AVAILABLE IN THE FORM OF SOURCE CODE TO ARISTA, AND,

08:44:11 20   THEREFORE, THIS DOCUMENT CITATION IS SUFFICIENT.

08:44:15 21   I CHECKED THAT NIGHT WITH OUR EXPERT TO GET AN INVENTORY

08:44:18 22   OF ALL OF THE VERSIONS OF CISCO SOURCE CODE ON THE SOURCE CODE

08:44:21 23   COMPUTER. THIS IS NOT ONE OF THOSE VERSIONS. AND THERE ARE

08:44:25 24   OTHER VERSIONS IN THIS DOCUMENT --

08:44:26 25   THE COURT: SO YOU JUST DON'T HAVE IOS 10?

08:44:30 1   MR. SANTACANA: NO. I DON'T KNOW THAT CISCO HAS IT.

08:44:32 2   THERE'S BEEN SOME EVIDENCE IN THE CASE --

08:44:34 3   THE COURT: IS THIS A TYPOGRAPHICAL ERROR, IF CISCO

08:44:38 4   DOESN'T HAVE IOS 10 --

08:44:41 5   MR. SANTACANA: I DON'T THINK IT'S A TYPOGRAPHICAL

08:44:44 6   ERROR. I THINK MR. LOUGHEED TOLD CISCO HE AUTHORED THESE

08:44:47 7   COMMANDS, AND SO THIS IS OBVIOUSLY HEARSAY.

08:44:50 8   THE COURT: WELL, MR. LOUGHEED TESTIFIED. WAS THIS

08:44:53 9   ONE OF THE PHRASES THAT WAS ON HIS EXHIBIT?

08:44:56 10   MR. PAK: YES, IT WAS YOUR HONOR.

08:44:57 11   THE COURT: WELL, I HAVE DIRECT EVIDENCE.

08:44:58 12   MR. SANTACANA: DIRECT EVIDENCE, YOUR HONOR, BUT NOT

08:45:01 13   A SUMMARY OF VOLUMINOUS EVIDENCE. IF MR. LOUGHEED TESTIFIED

08:45:06 14   CORRECTLY, THIS IS A DIFFERENT QUESTION. IF YOU LOOK FURTHER

08:45:09 15   INTO THE DOCUMENT THERE ARE OTHER EXAMPLES OF THIS WHERE OTHER

08:45:12 16   PEOPLE ARE NAMED AS AUTHORS AND THERE ARE VERSIONS OF IOS THAT

08:45:16 17   ARE LISTED SUCH AS VERSION 7 AND 8 THAT WE KNOW HAVE BEEN

08:45:20 18   DESTROYED.

08:45:22 19   AND SO IT'S NOT CLEAR TO US WHY CISCO CLAIMS THAT THAT WAS

08:45:27 20   THE SOURCE OF AUTHORSHIP. BUT THAT'S ONLY ABOUT 50 OF THE

08:45:32 21   ENTRIES ON THIS LIST OF 500. I HAVE A LARGER PROBLEM I WOULD

08:45:35 22   LIKE TO DISCUSS, WHICH IS THAT OVER 200 OF THE ENTRIES LOOK

08:45:39 23   LIKE THE ONE ON PAGE 1 IN THE FIRST LINE, WHICH IS A CITATION

08:45:44 24   TO SOURCE CODE.

08:45:45 25   ON MONDAY, MR. PAK EXPLAINED THAT WHAT CISCO DID WAS

08:45:49 1   FIGURE OUT WHO CHECKED IN THE SOURCE CODE FOR EACH COMMAND,

08:45:53 2   THAT IS WHO TOOK THE SOURCE CODE, AND ADDED IT TO CISCO'S

08:45:55 3   SOURCE CODE REPOSITORY.

08:45:58 4   BUT IN THIS CASE WHEN CISCO WAS RESISTING HAVING TO

08:46:02 5   PRODUCE THIS INTERROGATORY RESPONSE, MR. REMAKER, WHO IS

08:46:06 6   PURPORTEDLY THE PREPARER OF THIS DOCUMENT AND WHO CISCO, I

08:46:10 7   UNDERSTAND, INTENDS TO RECALL IN ORDER TO ADMIT THIS DOCUMENT,

08:46:13 8   HE SUBMITTED A SWORN DECLARATION WHERE HE SAID THAT SOURCE CODE

08:46:17 9   CHECK-INS MEAN NOTHING.

08:46:19 10   PHOTOCOPY WE CAN LOOK AT EXHIBIT 5612, AND I HAVE COPIES

08:46:27 11   HERE, IF YOU WOULD LIKE TO USE THE PAPER, WE FILED A MOTION TO

08:46:36 12   COMPEL RESPONSES TO OUR INTERROGATORY.

08:46:41 13   THE COURT: AND WHAT PARAGRAPH ARE YOU DIRECTING ME

08:46:42 14   TO?

08:46:43 15   MR. SANTACANA: I WOULD LIKE TO LOOK AT PARAGRAPH 11.

08:46:45 16   MR. REMAKER SUBMITTED THIS IN OUR OPPOSITION TO THE MOTION TO

08:46:51 17   COMPEL. THE PURPOSE OF THIS DECLARATION WAS TO SHOW THAT IT

08:46:53 18   WOULD BE IMPOSSIBLE TO GO THROUGH CISCO'S RECORDS AND DETERMINE

08:46:56 19   WHO THE AUTHOR OF EACH COMMAND IS.

08:46:59 20   SO MR. REMAKER SAID UNDER OATH, "AS A MATTER OF COURSE

08:47:03 21   CISCO DOESN'T TRACK THE DEVELOPER RESPONSIBLE FOR EACH LINE OF

08:47:06 22   SOURCE CODE. CISCO TEAMS WORK COLLABORATIVELY AND THE PERSON

08:47:10 23   WHO 'CHECKS-IN' OR PUTS THE CODE INTO THE SOURCE CODE

08:47:14 24   REPOSITORY FOR THE FIRST TIME MAY OR MAY NOT BE THE PERSON THAT

08:47:17 25   DESIGNED THE COMMAND EXPRESSION. THEY MAY BE AND IN MANY

08:47:21 1   INSTANCES WILL LIKELY BE THE PERSON WHO PERFORMED THE

08:47:24 2   PROGRAMMING TASK AFTER ALL CREATIVE DESIGN DECISIONS WERE

08:47:27 3   ALREADY MADE."

08:47:28 4   THE NAME ON THIS INTERROGATORY RESPONSE IS THE PERSON WHO

08:47:31 5   MADE THE PROGRAMMING TASK, NOT THE PERSON WHO, ACCORDING TO

08:47:36 6   MR. REMAKER, WOULD HAVE MADE ANY CREATIVE DESIGN DECISION. AND

08:47:41 7   YET --

08:47:42 8   THE COURT: AND NOT NECESSARILY THAT PERSON.

08:47:43 9   MR. SANTACANA: NOT NECESSARILY.

08:47:44 10   THE COURT: ALL RIGHT. WHICH IS JUST AS GOOD BUT

08:47:47 11   IT'S JUST AS BIG A PROBLEM.

08:47:48 12   MR. SANTACANA: SO I HAVE SOME EXEMPLARS I CAN SHOW

08:47:51 13   YOU, YOUR HONOR, BUT I THINK THESE TWO ITEMS ALONE MAKE IT

08:47:53 14   IMPOSSIBLE FOR THIS EXHIBIT TO BE SHOWN TO THE JURY.

08:47:56 15   THE COURT: AND THEN, OF COURSE, I ALSO SAW THAT SOME

08:47:58 16   OF THEM ARE JUST LISTED AS CISCO. IT WAS VERY FEW THAT DIDN'T

08:48:03 17   HAVE NAMES ABOUT BUT THERE WERE A COUPLE. MAYBE I SAW THREE OR

08:48:07 18   FOUR WHEN I WAS --

08:48:08 19   MR. PAK: THAT IS CORRECT, YOUR HONOR.

08:48:09 20   THE COURT: SO, MR. PAK, YOU KNOW, MR. LOUGHEED CAN

08:48:11 21   CERTAINLY GIVE DIRECT EVIDENCE. IT WOULD AFFECT THIS CHART,

08:48:15 22   AND THIS IS -- THIS REPRESENTS -- THIS IS -- YOU CAN'T CHANGE

08:48:21 23   EXHIBIT F, OF COURSE, BUT YOU CAN CHANGE YOUR SUMMARY DOCUMENT

08:48:25 24   TO INDICATE THROUGH HIS TESTIMONY WHEN HE -- AND WE DIDN'T

08:48:30 25   ACTUALLY HAVE AN EXHIBIT, IT WAS JUST A DEMONSTRATIVE OF THE

08:48:36 1   COMMAND EXPRESSIONS MR. LOUGHEED CLAIMS AUTHORSHIP OF.

08:48:39 2   MR. PAK: AND WE HAD HIM WEED OUT THOSE COMMANDS INTO

08:48:43 3   THE RECORD SO WE DO HAVE THAT.

08:48:45 4   BUT, YOUR HONOR, LET ME KIND OF STEP BACK AND EXPLAIN WHAT

08:48:48 5   THIS DOCUMENT IS ALL ABOUT. I THINK WE MAY HAVE A

08:48:50 6   MISUNDERSTANDING.

08:48:51 7   CISCO IS THE AUTHOR FOR PURPOSES OF COPYRIGHT, SO THIS IS

08:48:55 8   NOT A SITUATION WHERE WE HAVE INDIVIDUAL COPYRIGHTED WORKS THAT

08:49:00 9   BELONG TO INDIVIDUALS. EVERYTHING WAS DONE, IT'S WORK MADE FOR

08:49:04 10   HIRE, EITHER AS AN EMPLOYEE OR AS A CONSULTANT.

08:49:08 11   SO THE QUESTION OF WHO IS THE AUTHOR FOR PURPOSES OF

08:49:11 12   COPYRIGHT LAW, THAT QUESTION HAS ALREADY BEEN RESOLVED, THAT'S

08:49:15 13   CISCO, THE COMPANY, AND THERE'S NO DISPUTE ABOUT THAT.

08:49:19 14   WHAT THIS DOCUMENT REFLECTS, YOUR HONOR, IS OUR VERY BEST

08:49:23 15   EFFORT. OBVIOUSLY WE CAN'T GO BACK IN TIME AND RECREATE

08:49:28 16   HISTORY.

08:49:28 17   THE COURT: SURE.

08:49:28 18   MR. PAK: SO WHAT WE DID IS IN RESPONSE TO AN

08:49:31 19   INTERROGATORY THEY PROPOUNDED ON US, AND WE HAD MOTION PRACTICE

08:49:34 20   IN FRONT OF JUDGE GREWAL. WE DID THE BEST WE CAN TO COLLECT

08:49:39 21   ALL THE BUSINESS RECORDS WE HAVE IN OUR POSSESSION, AND WE

08:49:42 22   ASSEMBLED IT HERE NOT ONLY FOR THE PURPOSE OF IDENTIFYING

08:49:46 23   AUTHORS BUT THE EARLIEST-KNOWN DOCUMENTS, THE DATE OF THE

08:49:49 24   EARLIEST-KNOWN OPERATING SYSTEM OF THAT COMMAND. FIRST

08:49:56 25   DISTRIBUTION DATE.

08:49:58 1   IT IS OUR CONTENTION AND I THINK THERE'S NO DISPUTE THAT

08:50:04 2   ALL 506 OF THE COMMANDS WE ASSERTED IN THIS CASE, THERE IS NO

08:50:07 3   OTHER COMPANIES THAT USED THESE COMMANDS BEFORE WE DID. SO

08:50:10 4   THESE DATES ARE IMPORTANT. I AM PERFECTLY HAPPY ELIMINATING

08:50:14 5   THE ENTIRE AUTHORSHIP COLUMN TO RESOLVE THIS DISPUTE ABOUT --

08:50:17 6   BECAUSE WE DON'T THINK IT'S RELEVANT TO THE QUESTION OF -- ANY

08:50:20 7   QUESTION ACTUALLY IN THIS CASE.

08:50:21 8   THE COURT: AND YOU WOULD BE -- YOU WOULD BE WILLING

08:50:23 9   TO ALLOW IT JUST TO SHOW CISCO AS THE AUTHOR.

08:50:26 10   MR. PAK: ABSOLUTELY. WE CAN --

08:50:28 11   THE COURT: AND IT REALLY CAUSES ME TO QUESTION THIS,

08:50:31 12   BECAUSE, IN FACT, COMPANIES WORK AS TEAMS.

08:50:38 13   MR. PAK: ABSOLUTELY.

08:50:38 14   THE COURT: AND THE INDIVIDUALS, IT'S NOT LIKE A

08:50:40 15   PATENT WHERE YOU NEED AN INVENTOR AND IT HAS TO BE ACCURATE AND

08:50:43 16   NAMES ARE ON AND OFF OF PATENTS ALL THE TIME TO ENSURE THAT

08:50:46 17   ACCURACY, EVEN THOUGH THEY MAY NOT HAVE ANY OWNERSHIP RIGHT TO

08:50:51 18   THE PATENT.

08:50:51 19   MR. PAK: THAT'S RIGHT, YOUR HONOR.

08:50:52 20   THE COURT: THIS IS A LITTLE DIFFERENT AND COPYRIGHT

08:50:54 21   IS A MORE FLUID CONCEPT, FRANKLY. SO I -- I KNOW THAT YOU

08:51:00 22   SPENT ENORMOUS TIME AND COST TO IDENTIFY AUTHORS AS ARISTA

08:51:06 23   REQUESTED, AND AS I'VE HEARD MR. LOUGHEED'S TESTIMONY ABOUT

08:51:12 24   WHAT CISCO DID TO CREATE THESE COMMAND LINES AND HELP

08:51:20 25   DESCRIPTIONS AND RESPONSES, IT'S -- YOU KNOW, IT DOESN'T LOOK

08:51:26 1   AS THOUGH CISCO ATTRIBUTED AUTHORSHIP TO A PARTICULAR MEMBER OF

08:51:31 2   ANY TEAM.

08:51:33 3   MR. PAK: CORRECT.

08:51:33 4   THE COURT: IT DOESN'T ATTRIBUTE AUTHORSHIP TO THE

08:51:36 5   PARSER-POLICE, THEY WERE JUST GIVING GUIDANCE. AND IT'S NOT

08:51:42 6   EVEN CLEAR TO ME THAT THE TEAMS, HOW FORMALIZED THE TEAMS WERE,

08:51:46 7   NOR DOES IT MATTER, FRANKLY, IT JUST DOESN'T MATTER.

08:51:50 8   SO, YOU KNOW, I THINK THAT IT'S PROBABLY -- I AGREE WITH

08:51:55 9   ARISTA, IT IS INACCURATE TO ASCRIBE THIS EVIDENCE AS EVIDENCE

08:52:02 10   TO ESTABLISH THE AUTHOR AS NAMED ON THIS DOCUMENT, THAT IT MAY

08:52:07 11   BE THE LAST PERSON TO TOUCH IT BEFORE IT WAS, AS IT WAS LOGGED

08:52:12 12   IN AND CEMENTED, ESSENTIALLY, AS A COMMAND. I MEAN, IT WOULD

08:52:21 13   HAVE BEEN THE YOUNGEST PERSON ON THE TEAM, YOU KNOW.

08:52:23 14   MR. PAK: THAT'S TRUE.

08:52:24 15   THE COURT: YOU'VE GOT TO DO THIS, MIKEY, BECAUSE

08:52:26 16   YOU'RE THE KID, BUT --

08:52:27 17   MR. PAK: AND THIS IS GOING BACK IN TIME AND JUST TO

08:52:29 18   SET THE CONTEXT AGAIN, YOUR HONOR, THESE ARE PROTECTABLE

08:52:31 19   ELEMENTS. SO THE REASON WHY WE ARE HAVING THIS DISCUSSION NOW

08:52:34 20   AT THIS POINT IS IT'S UNQUESTIONABLE THAT CISCO REGISTERED ALL

08:52:40 21   THOSE REGISTRATIONS AND THAT THE COPYRIGHTED WORKS, AS

08:52:43 22   YOUR HONOR DEFINED IT, ARE THE USER INTERFACES OF THE DIFFERENT

08:52:46 23   OPERATING SYSTEMS.

08:52:47 24   ALL WE ARE TALKING ABOUT IS AS WE GO THROUGH THE

08:52:50 25   FILTRATION PROCESS, SHOWING DILIGENCE IN TERMS OF THE

08:52:54   1   PROTECTABLE ELEMENTS, SHOWING INFORMATION THAT DO EXIST IN OUR

08:52:56   2   RECORDS TO CORROBORATE THEIR CREATION. AND WE, FRANKLY, DON'T

08:53:03   3   THINK AUTHORSHIP IS REALLY THAT RELEVANT.

08:53:05   4   THE COURT: WELL, YOU KNOW, MR. PAK, AND MR. VAN NEST

08:53:07   5   CAN CORRECT ME IF HE DISAGREES WITH THIS, BUT IT HAD BEEN

08:53:10   6   UNCLEAR TO ME, AND I HIGHLIGHTED AND DREW BOXES AROUND WHAT I

08:53:15   7   THOUGHT WERE AMBIGUOUS STATEMENTS THROUGHOUT YOUR PAPERS AS TO

08:53:20   8   WHAT YOU WERE CLAIMING IN -- AND I HAVE BEEN LOOKING AT AND

08:53:22   9   WORKING ON ANALYTIC DISSECTION, IT'S CLEAR TO ME NOW THAT YOU

08:53:26 10   ARE ONLY CLAIMING THAT THE BUILDING BLOCK OF COMMAND LINE

08:53:35 11   EXPRESSIONS AS A COMPILATION IS PROTECTABLE AND OBJECT THE

08:53:37 12   INDIVIDUAL LINES.

08:53:38 13   AND IN FACT, ALTHOUGH IT'S PART OF THE TESTIMONY YESTERDAY

08:53:40 14   AND NOT PART OF WHAT I'M WORKING ON, BECAUSE IT WOULD BE

08:53:43 15   PREMATURE FOR ME, BUT EVEN YOUR OWN EXPERT DID NOT OFFER

08:53:48 16   TESTIMONY THAT AN INDIVIDUAL LINE WAS PROTECTABLE INDIVIDUALLY.

08:53:51 17   HE TALKED ABOUT THEM AS A GROUP.

08:53:53 18   AND YOUR BRIEFING, TO ME, IS ABUNDANTLY CLEAR. AND SO I'M

08:53:58 19   NOW SEEING WHAT IS, AS YOU DESCRIBE IT, NOT ME, BUT A

08:54:02 20   COMPILATION, I MEAN MAYBE THE ENTIRE USER INTERFACE IS A

08:54:06 21   COMPILATION AND WHETHER I BREAK IT DOWN INTO THE FOUR OR FIVE

08:54:10 22   PARTS AS INDIVIDUAL COMPILATIONS, I'M STILL THINKING ABOUT.

08:54:14 23   BUT, QUITE FRANKLY, TO THE EXTENT THAT YOU HAVE NOW, I

08:54:18 24   THINK, CLARIFIED THAT YOU ARE SEEKING PROTECTION FOR COMMAND

08:54:21 25   LINES, AT MOST, AT THEIR LEVEL OF THE ENTIRE BUILDING BLOCK,

08:54:25 1   AND NOT 508 SEPARATE PROTECTABLE ELEMENTS, THEN I THINK THIS

08:54:30 2   ARGUMENT IS MORE PERSUASIVE TO ME ABOUT THE TEAM EFFORT AND THE

08:54:35 3   PROCESS OF DEVELOPING THIS.

08:54:38 4   THAT, IN MY VIEW, OF COURSE, ONCE WE ARE AT THIS LEVEL,

08:54:41 5   AND I JUST WANT TO BE CLEAR BECAUSE YOU ALL ARE KNOW PLANNING

08:54:46 6   YOUR CASE, IS LEADING WHERE I SAY ALL ALONG TO THIN PROTECTION

08:54:49 7   AND VIRTUAL IDENTITY, BUT THAT'S NO SURPRISE, I HAVE BEEN

08:54:52 8   TELLING YOU THAT IN CHAMBERS FOR QUITE A WHILE AND I'M JUST

08:54:55 9   TRYING TO NAIL DOWN ALL THE EVIDENCE SO THAT I CAN BE SURE I'M

08:54:59 10   CORRECT ON THAT.

08:55:00 11   I KNOW ARISTA HAS ARGUED THAT CONSISTENTLY. BUT THIS IS

08:55:03 12   ONE OF THE FACTORS THAT I'M CONSIDERING AS TO WHETHER IT WOULD

08:55:08 13   BE THIN OR BROAD PROTECTION, AND IT OBVIATES THE NEED TO

08:55:10 14   DETERMINE WHETHER AN INDIVIDUAL PHRASE IS TOO SHORT TO HAVE ANY

08:55:15 15   CREATIVE EXPRESSION IN IT.

08:55:17 16   SO -- OR AT LEAST MAKES IT LESS CENTRAL TO A DECISION

08:55:23 17   BECAUSE THE RESULT IS THE SAME.

08:55:24 18   MR. PAK: YOUR HONOR, OBVIOUSLY WE ARE GOING TO HAVE

08:55:26 19   SOME MORE DISCUSSION AS YOUR HONOR IS THINKING THROUGH THAT,

08:55:29 20   AND THERE'S GOING TO BE MORE EVIDENCE ON THAT.

08:55:31 21   THE COURT: OF COURSE.

08:55:32 22   MR. PAK: I THINK JUST TO BE CLEAR ON THE RECORD,

08:55:34 23   WHAT WE ARE TALKING ABOUT IS NOT -- THERE'S A DIFFERENCE

08:55:36 24   BETWEEN PROTECTION, AS FAR AS MAKING A PASS FILTRATION, VERSUS

08:55:45 25   COPYRIGHTABILITY AND VERSUS WHAT IS THE COPYRIGHTED WORK.

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08:55:47   1   THE COURT: SURE.

08:55:48   2   MR. PAK: WE ARE NOT SAYING INDIVIDUAL TERMS ARE

08:55:50   3   COPYRIGHTABLE --

08:55:50   4   THE COURT: YES. BUT YOU ARE ACTUALLY NOT SAYING

08:55:52   5   THAT INDIVIDUAL PHRASES ARE COPYRIGHTABLE, YOU ARE SAYING THE

08:55:57   6   COMMAND, I BELIEVE.

08:55:58   7   MR. PAK: I THINK WE'VE NEVER -- OR LET ME BE VERY

08:56:03   8   CLEAR. IT IS NOT OUR POSITION THAT INDIVIDUAL WORDS ARE

08:56:07   9   COPYRIGHTABLE OR WERE COPYRIGHTED WHEN WE MADE THE

08:56:09 10   REGISTRATIONS WITH THE COPYRIGHT OFFICE.

08:56:10 11   THE COURT: SURE.

08:56:11 12   MR. PAK: YOUR HONOR RESOLVED THAT QUESTION. WE KNOW

08:56:13 13   THE USER INTERFACES OF THE FOUR OPERATING SYSTEMS ARE THE

08:56:17 14   COPYRIGHTED WORKS.

08:56:18 15   WE DO BELIEVE AS FAR AS FILTRATION, LOOKING AT WHERE THE

08:56:21 16   THINGS ARE PROTECTABLE, THAT WE DO BELIEVE THAT THESE COMMAND

08:56:25 17   EXPRESSIONS, BECAUSE OF THE PROCESS THAT WE TALKED ABOUT, DO

08:56:28 18   REFLECT JUDGMENT CALLS ON --

08:56:31 19   THE COURT: OH, I'M NOT SUGGESTING THEY DON'T. BUT I

08:56:33 20   DON'T HAVE ALL THE EVIDENCE YET. I MEAN, I CAN'T DRAW THAT

08:56:37 21   CONCLUSION.

08:56:37 22   MR. PAK: RIGHT.

08:56:38 23   THE COURT: BUT I JUST KNOW WHAT YOU HAVEN'T PUT IN

08:56:40 24   IN YOUR CASE, AND THAT'S NOT GOING TO CHANGE.

08:56:43 25   MR. PAK: IT'S NOT GOING TO CHANGE, YOUR HONOR.

08:56:45 1   THE COURT: SO LET'S GET BACK BECAUSE NOW WE HAVE

08:56:47 2   KIND OF GOTTEN AWAY FROM IT.

08:56:49 3   MR. PAK: SO THE ONLY THING WE ARE ASKING REALLY TO

08:56:51 4   DO WITH THIS SUMMARY EXHIBIT IS I UNDERSTAND THE COMPLAINTS

08:56:54 5   THAT ARISTA HAS MADE ABOUT JUST THE LACK OF HISTORICAL

08:56:56 6   DOCUMENTS ON SOME OF THE THESE AUTHORS, WE DON'T THINK THAT'S

08:56:59 7   RELEVANT TO ANY ISSUE IN THE CASE. I WOULD PROPOSE THAT WE

08:57:03 8   JUST EITHER BLACK OUT OR ELIMINATE THE AUTHOR COLUMN --

08:57:07 9   THE COURT: WELL, I DON'T WANT YOU TO BLACK THINGS

08:57:09 10   OUT THAT JUST RAISES ALL KINDS OF --

08:57:11 11   MR. PAK: RIGHT. SO I WOULD ELIMINATE THAT COLUMN

08:57:15 12   ALTOGETHER. AND THIS SLOWS AGAIN --

08:57:17 13   THE COURT: THE EARLIEST KNOWN DOCUMENT IS FINE. I

08:57:20 14   MEAN, IT IS WHAT IT IS.

08:57:21 15   MR. PAK: YES. AND IF THERE IS COMPLAINTS ABOUT SOME

08:57:24 16   OF THE --

08:57:24 17   THE COURT: YOU CAN TAKE OUT THE NAMED INDIVIDUAL AND

08:57:27 18   LEAVE THIS ALL AS CISCO, I DON'T KNOW WHAT ISSUES THIS RAISES

08:57:31 19   FOR ARISTA.

08:57:32 20   MR. SANTACANA: A COUPLE OF THINGS. I APPRECIATE THE

08:57:34 21   OFFER, AND WE WILL CERTAINLY ACCEPT IT TO REMOVE THE INDIVIDUAL

08:57:37 22   AUTHORS. I THINK MR. PAK WAS PROPOSING REMOVING THE ENTIRE

08:57:40 23   COLUMN.

08:57:41 24   THE COURT: WHICH COLUMN, THE ENTIRE AUTHOR COLUMN?

08:57:43 25   MR. PAK: WHAT I WOULD DO IS INSTEAD OF ORIGINATOR, I

08:57:46   1   WOULD JUST SAY AUTHOR INFORMATION AND PUT CISCO ALL THE WAY

08:57:49   2   DOWN.

08:57:49   3   THE COURT: OR JUST TAKE IT OUT. I MEAN, IS THAT

08:57:52   4   BETTER, MR. VAN NEST, TO TAKE OUT THE COLUMN?

08:57:54   5   MR. VAN NEST: WELL I WANTED TO -- YEAH, I THINK SO,

08:57:57   6   YEAH.

08:57:57   7   BUT THIS IS REALLY ONLY FAIR IF WHAT YOUR HONOR SAID IS

08:58:01   8   TRUE, AND, OF COURSE, I AGREE WITH IT 100 PERCENT, BUT I DIDN'T

08:58:04   9   HEAR MR. PAK SAY, I AGREE ALSO.

08:58:06   10   THE COURT: WELL, HE DOESN'T HAVE TO AGREE BECAUSE

08:58:08   11   I'M KNOW GOING TO ISSUE AN ORDER.

08:58:10   12   MR. VAN NEST: OKAY. FAIR ENOUGH. MY

08:58:12   13   UNDERSTANDING --

08:58:12   14   THE COURT: I MEAN, I REALLY WAS JUST SORT OF

08:58:14   15   FLOATING, I WANT YOU TO KNOW WHERE I AM BECAUSE YOU ARE PUTTING

08:58:17   16   YOUR CASE ON, AND IF MR. PAK COULD MAKE A CONVINCING ARGUMENT,

08:58:21   17   I WOULD RETHINK.

08:58:22   18   MR. VAN NEST: IN OTHER WORDS, IN OTHER WORDS, IF

08:58:23   19   THEY ARE HANGING ON TO INDIVIDUAL LINE PROTECTABILITY WHICH IS

08:58:29   20   WHAT YOU ADDRESS, THEN IT'S NOT FAIR TO DO THIS.

08:58:32   21   IF THEY ARE NOT, AND WHAT THEY REALLY HAVE IS A CLAIM FOR

08:58:35   22   THE COMPILATION OR WHATEVER YOU WANT TO CALL IT, THE CLI

08:58:38   23   COMMAND LINES, AS A WHOLE --

08:58:40   24   THE COURT: YEAH.

08:58:40   25   MR. VAN NEST: -- THAT HAS DIFFERENT IMPLICATIONS,

08:58:42 1   BUT IT MAKES IT MORE FAIR TO TAKE THIS COLUMN OFF.

08:58:45 2   THE COURT: GOOD. AND THEN YOU WON'T KNOW ARGUING

08:58:47 3   THE ISSUE OF THERE'S NO AUTHORSHIP.

08:58:49 4   MR. PAK, YOUR PAPERS, AS I SAID, I THINK THEY HAVE BEEN

08:58:55 5   AMBIGUOUS. BUT IN YOUR LAST FILING, I THINK YOU WERE

08:58:59 6   ABUNDANTLY CLEAR THAT YOU WERE LOOKING AT THE BUILDING BLOCK AS

08:59:03 7   A WHOLE AND NOT THE INDIVIDUAL PIECES OF IT.

08:59:06 8   NOW, I HAVE TO DETERMINE IF ANYTHING WITHIN THE BUILDING

08:59:09 9   BLOCK IS UNPROTECTABLE, BUT -- AND, OF COURSE, YOU'VE ALREADY

08:59:14 10   INDICATED THE INDIVIDUAL WORDS ARE NOT SOUGHT -- THE

08:59:21 11   PROTECTION. AND I WOULD HAVE MADE THAT FINDING ANYWAY, BUT YOU

08:59:23 12   HAVE, I APPRECIATE, THAT CISCO HAS COME FORWARD WITH THAT. AND

08:59:27 13   YOU HAVE -- AND REALLY, I THINK CISCO HAS DONE A VERY GOOD JOB

08:59:30 14   OF BEING VERY REASONABLE AND CONSISTENT WITH YOUR STATEMENT TO

08:59:35 15   THE COURT THAT YOU HAVE DONE FILTERING YOURSELVES TO PRESENT

08:59:40 16   WHAT YOU BELIEVE IS A FULLY FILTERED SET OF PROTECTABLE

08:59:43 17   ELEMENTS.

08:59:44 18   AND I MAY DISAGREE WITH YOU, BUT YOU DID A LOT OF

08:59:48 19   FILTERING, AND I GIVE YOU A LOT OF CREDIT FOR THAT. AND SO

08:59:51 20   THAT, YOU KNOW, THAT MOVES US ALONG AS TO THE -- AND I STILL

08:59:55 21   HAVE PLENTY OF EVIDENCE TO HEAR SO I'M NOT DRAWING A FINAL

08:59:58 22   CONCLUSION TO THE LINES THEMSELVES BECAUSE I HAVEN'T HEARD ANY

09:00:02 23   EXTERNAL CONSTRAINTS YET. YOU GAVE ME TESTIMONY THAT THERE

09:00:05 24   WERE NONE, AND THAT'S FINE, AND I IMAGINE I'M GOING TO HEAR A

09:00:08 25   LITTLE BIT MORE SOMEWHERE ALONG THE LINE.

09:00:11	1	MR. SANTACANA: YOU CAN BET ON IT, YOUR HONOR.
09:00:13	2	THE COURT: SO ALL RIGHT. SO I THINK FOR NOW YOU ARE
09:00:15	3	GOING TO TAKE THIS COLUMN OUT?
09:00:17	4	MR. PAK: EITHER IF WE TAKE IT OUT I WOULD LIKE TO
09:00:19	5	STILL BE ABLE, SO THE JURY KNOWS WHAT WE ARE DOING, I WOULD SAY
09:00:22	6	THE ASSERTED CISCO COMMANDS AT THE TOP, SOMETHING LIKE THAT,
09:00:26	7	JUST TO KNOW, BECAUSE OTHERWISE I WOULD -- THEY WOULD HAVE NO
09:00:31	8	CONTEXT OF KNOWING WHAT THIS DOCUMENT IS.
09:00:33	9	THE COURT: CISCO COMMANDS.
09:00:34	10	MR. PAK: CISCO COMMANDS OR ASSERTED CISCO COMMANDS.
09:00:36	11	THE COURT: WITH THAT YOU COULD RENAME THE FIRST
09:00:38	12	COLUMN, CISCO COMMAND EXPRESSIONS. IS THAT ANY PROBLEM?
09:00:42	13	MR. SANTACANA: I DON'T HAVE A PROBLEM WITH THAT
09:00:45	14	YOUR HONOR. BUT I WOULD LIKE TO POINT OUT I DO STILL HAVE A
09:00:49	15	COUPLE OF PROBLEMS WITH THIS DOCUMENT.
09:00:50	16	THE COURT: OKAY. GO ON.
09:00:52	17	MR. SANTACANA: SO IF WE COULD PUT UP 9004 ON THE
09:00:55	18	SCREEN.
09:00:55	19	THE COURT: ALL RIGHT. NOW, WE ARE BACK ON YOUR
09:00:57	20	TIME.
09:00:59	21	MR. SANTACANA: ON PAGE 18, THIS IS THE DOCUMENT THAT
09:01:03	22	CISCO, SORRY, PAGE 18 OF THE INTERROGATORY RESPONSE, THE
09:01:08	23	DOCUMENT --
09:01:09	24	THE COURT: I DON'T HAVE AN INTERROGATORY RESPONSE, I
09:01:11	25	HAVE A DEPOSITION TRANSCRIPT.

09:01:19 1   MR. SANTACANA: OH, I'M SORRY.

09:01:26 2   THE COURT: NO, I THOUGHT THE SAME THING YOU GAVE

09:01:28 3   ME --

09:01:29 4   MR. SANTACANA: LET ME CLARIFY. SO THE FIRST PAGE IS

09:01:31 5   THE DOCUMENT CITED BY CISCO ON PAGE 18 OF THIS INTERROGATORY

09:01:36 6   RESPONSE WE ARE DISCUSSING.

09:01:37 7   THE COURT: THERE'S NOTHING ON HERE THAT TELLS ME

09:01:39 8   IT'S PAGE 18 OF ANYTHING, THAT'S WHY I WAS CONFUSED, I'M SORRY.

09:01:43 9   MR. SANTACANA: SO ON THIS DOCUMENT, YOUR HONOR, ON

09:01:45 10   PAGE 18.

09:01:45 11   THE COURT: OH, ON PAGE 18 OF 4789?

09:01:49 12   MR. SANTACANA: YES.

09:01:50 13   THE COURT: SORRY.

09:01:51 14   MR. SANTACANA: NO PROBLEM.

09:01:52 15   THE COMMAND ISIS HELLO-MULTIPLIER IS THE FIRST ONE

09:01:56 16   HIGHLIGHTED AND IT CITES -- THE DOCUMENT THAT I'VE HANDED YOU.

09:02:00 17   IT'S A TWO-PAGE DOCUMENT.

09:02:02 18   AND NOWHERE ON IT DOES IT SAY ISIS HELLO-MULTIPLIER.

09:02:06 19   THERE'S NO REASON FOR US TO BELIEVE THAT THIS DOCUMENT HAS

09:02:08 20   ANYTHING TO DO WITH THIS COMMAND. THE DEPOSITION TRANSCRIPT

09:02:13 21   THAT IS BEHIND THERE, PAPER CLIPPED TO IT, IS MR. LOUGHEED'S

09:02:16 22   TESTIMONY ABOUT THIS EXACT DOCUMENT.

09:02:19 23   THE COURT: OKAY.

09:02:20 24   MR. SANTACANA: WHEN I DEPOSED HIM, I DEPOSED HIM

09:02:23 25   ABOUT HELP DESCRIPTION. AND THE SAME DOCUMENT WAS CITED AS

09:02:26 1   EVIDENCE OF THE CREATION OF A HELP DESCRIPTION.

09:02:28 2   AND MR. LOUGHEED TESTIFIED THAT THIS DOCUMENT, WHEN I

09:02:32 3   HANDED IT TO HIM, TOLD HIM NOTHING ABOUT THE HELP DESCRIPTION.

09:02:34 4   AND FOR THE SAME REASON IT CAN TELL YOU NOTHING ABOUT THIS

09:02:38 5   COMMAND, BECAUSE WHAT IT IS A LIST OF HYPERLINKS, AND THE

09:02:43 6   HYPERLINKS WOULD TAKE YOU TO OTHER DOCUMENTS THAT WERE NEVER

09:02:47 7   PRODUCED IN THE CASE AND THAT CISCO COUNSEL ON THE RECORD SAID

09:02:50 8   CISCO WOULD NOT PRODUCE IN THE CASE.

09:02:51 9   AND SO AS FAR AS WE KNOW, THIS DOCUMENT IS NOT EVIDENCE OF

09:02:56 10   THE CREATION OF ISIS HELLO-MULTIPLIER ON AUGUST 3RD, 1995.

09:03:02 11   THE COURT: SO IT'S OFFERED AS THE EARLIEST KNOWN

09:03:04 12   DOCUMENT OF IT JUST AS TO THE TIME IT WAS INTRODUCED.

09:03:07 13   MR. SANTACANA: EXACTLY. AND, AGAIN, YOU ASKED FOR

09:03:09 14   EXAMPLES.

09:03:10 15   THE COURT: SURE, I APPRECIATE THAT.

09:03:12 16   MR. SANTACANA: WE DIDN'T DO ALL 500, AND WE DIDN'T

09:03:15 17   DEPOSE ANYBODY ON ALL THE 500. BUT I THINK THIS IS AN ENDEMIC

09:03:19 18   PROBLEM. YOU WILL SEE MANY DOCUMENTS LISTED AS CSC IN THIS

09:03:25 19   INTERROGATORY 4789. ALL OF THEM WE THINK ARE GOING TO HAVE

09:03:28 20   SIMILAR PROBLEMS.

09:03:29 21   MR. PAK: WE OBVIOUSLY DISAGREE, YOUR HONOR.

09:03:30 22   MR. LOUGHEED DID A LOT OF THINGS FOR US IN THIS CASE. ONE

09:03:33 23   OF THE THINGS HE WAS NOT DESIGNATED WAS THE 30(B)(6) WITNESS TO

09:03:37 24   TALK ABOUT THE COMMAND GENERATION, THAT WAS MR. REMAKER. THEY

09:03:40 25   DIDN'T ASK HIM ANY QUESTIONS ABOUT THIS DOCUMENT IN THAT

09:03:43 1   DEPOSITION.

09:03:43 2   THE COURT: BUT IF THE DOCUMENT DOESN'T SUPPORT --

09:03:46 3   MR. PAK: ACTUALLY, IF THE TURN TO THE NEXT PAGE, IT

09:03:48 4   DOES.

09:03:48 5   THE COURT: OF THE DOCUMENT?

09:03:50 6   MR. PAK: YES. THIS IS CSCDI 139.39. THE

09:03:57 7   DEFINITION, YOUR HONOR, IS THE HELLO-MULTIPLIER, MULTIPLIER

09:04:02 8   COMMAND.

09:04:02 9   AND IF YOU LOOK AT THE DESCRIPTION, CURRENTLY THE ONLY

09:04:05 10   CONTROLLABLE PROGRAMMER FOR ISIS ADJACENCY MAINTENANCE IS THE

09:04:19 11   HOLDING TIME. IN LAWSUIT SITUATIONS IT IS NECESSARY TO UP THE

09:04:24 12   NUMBER OF --

09:04:25 13   THE COURT: I DON'T KNOW WHERE YOU ARE READING, I'M

09:04:27 14   SORRY. YOU LOST ME HERE.

09:04:28 15   MR. PAK: SO, YOUR HONOR, IF --

09:04:31 16   THE COURT: THE LOSSY SITUATION.

09:04:35 17   MR. PAK: SO THAT'S WHEN PACKETS ARE BEING LOST.

09:04:40 18   IT'S NECESSARY TO UP, THAT IS, TO INCREASE THE NUMBER OF HELLO

09:04:43 19   MESSAGES THAT MUST BE MISSED BEFORE DROPPING THE ADJACENCY.

09:04:51 20   SO THIS IS CLEAR DESCRIPTION OF THE FUNCTIONALITY THAT

09:04:53 21   RELATES DIRECTLY TO THE HELLO ISIS MULTIPLIER COMMAND. AND I

09:05:01 22   WILL NOTE ON THE FRONT, TOO, THAT, AGAIN, WE DON'T THINK

09:05:04 23   AUTHORSHIP IS IMPORTANT BUT IT DOES IDENTIFY THE SUBMITTED BY,

09:05:07 24   WHICH IS MR. KATZ, WHICH IS IDENTIFIED AS THE COMMAND AUTHOR,

09:05:10 25   AND YOUR HONOR CAN SEE THAT IN THE MIDDLE OF THE FIRST PAGE IT

09:05:13 1   SAYS SUBMITTED BY, THERE'S A D. KATZ.

09:05:16 2   THE COURT: YEAH.

09:05:17 3   MR. PAK: AND THEN YOU CAN SEE THE VERSIONS OF THE

09:05:19 4   OPERATING SYSTEMS THAT CORRESPONDED TO IT IN THE COLUMN TO THE

09:05:22 5   RIGHT. AND IT'S GOT ALL OF THE INFORMATION, IT'S PART OF OUR

09:05:26 6   BUG REPORTING DATABASE, THAT'S ONE OF THE THINGS THAT WE

09:05:29 7   OBVIOUSLY MAINTAIN AS A BUSINESS RECORD. I DON'T THINK THERE'S

09:05:31 8   ANY QUESTION IT'S ADMISSIBLE. I DON'T THINK THERE'S ANY

09:05:34 9   QUESTION THAT IT RELATES TO THE FUNCTIONALITY AT ISSUE. AND I

09:05:39 10   THINK --

09:05:40 11   THE COURT: WELL, I MEAN -- SO HERE'S -- THE JURY IS

09:05:43 12   NOT GOING TO BE GIVEN THE OPPORTUNITY TO DETERMINE WHETHER THIS

09:05:47 13   IS SUFFICIENT CIRCUMSTANTIAL EVIDENCE OR DIRECT EVIDENCE OF

09:05:55 14   EARLIEST KNOWN DOCUMENT. BUT I WOULD AGREE THAT THIS DOCUMENT

09:05:59 15   DOES MAKE REFERENCE ADEQUATELY AND WOULD BE AN ADMISSIBLE

09:06:04 16   DOCUMENT. BUT IN A SUMMARY FORM --

09:06:07 17   MR. SANTACANA: THAT'S EXACTLY MY POINT, YOUR HONOR.

09:06:09 18   IT MAY BE THAT IT RELATES BUT --

09:06:10 19   THE COURT: HERE IS THE PROBLEM, AND YOU ALL CAN

09:06:12 20   SOLVE IT IN ANY WAY YOU WANT. I'M GLAD TO SPEND A DAY OR TWO,

09:06:16 21   YOU WILL LOSE ABOUT EIGHT OR NINE HOURS EACH, AND MAKE CAREFUL

09:06:19 22   RULINGS ON THIS.

09:06:21 23   SO THIS ONE I THINK GOES TO CISCO.

09:06:24 24   MR. SANTACANA: OKAY.

09:06:25 25   THE COURT: BUT I'M GLAD TO, REALLY. MY TIME IS YOUR

09:06:27	1	TIME, I CAN DO IT.
09:06:29	2	MR. PAK: WE REALLY DON'T WANT TO DO THAT,
09:06:32	3	YOUR HONOR.
09:06:32	4	WE WOULD PROPOSE THAT AGAIN, IT'S A REASONABLE
09:06:34	5	ACCOMMODATION. I THINK WE TAKE OUT THE -- WE TAKE OUT ALL THE
09:06:39	6	COLUMNS ABOUT AUTHORSHIP. WE AREN'T PRESENTING IT FOR THAT
09:06:43	7	PURPOSE.
09:06:43	8	THE COURT: BUT THEN WE HAVE TO GET TO THE POINT ARE
09:06:45	9	YOU SEEKING A STIPULATION FROM ARISTA THAT THEY WILL NOT CLAIM
09:06:47	10	YOU FAILED TO PROVE AUTHORSHIP, AND, THEREFORE --
09:06:49	11	MR. PAK: NO, NOT AT ALL. JUST LIKE ALL THESE
09:06:52	12	SUMMARY EXHIBITS ARE SUMMARIES OF OUR EVIDENCE. WE ARE NOT
09:06:56	13	ASKING FOR A STIPULATION, WHICH IS OBVIOUSLY WE SUBMITTED A LOT
09:06:58	14	OF SUMMARY EXHIBITS IN THIS CASE.
09:07:00	15	WE ARE JUST SUMMARIZING THE CONTENTIONS OR THE EVIDENCE IN
09:07:02	16	THE CASE FOR ONE PARTY. THEY CAN MAKE ALL THE ARGUMENTS THEY
09:07:07	17	WANT WHETHER IT'S A TRIAL OR AFTERWARDS. ALL WE ARE TRYING TO
09:07:10	18	DO IS STREAMLINE THE PRESENTATION OF EVIDENCE.
09:07:11	19	THE COURT: AS I SAID, THAT'S VERY HELPFUL.
09:07:14	20	ONE OF THESE THINGS THAT YOU GAVE ME TO YOU NEED BACK.
09:07:18	21	MR. SANTACANA: NONE OF IT, YOUR HONOR.
09:07:19	22	THE COURT: OKAY. THAT'S FINE.
09:07:20	23	YOU KNOW, I'M THINKING THAT, WE CAN'T DRAW THE JURY'S
09:07:23	24	ATTENTION TO PARTICULAR DOCUMENTS, YOU CAN IN YOUR CLOSING.
09:07:27	25	MR. PAK: SURE.

09:07:28 1   THE COURT: BUT I WOULD LIKE A LIST OF THE SUMMARY

09:07:30 2 EXHIBITS SO THAT I CAN GET ACCESS TO THEM BECAUSE THEY ARE

09:07:35 3 BURIED IN MY NOTES.

09:07:36 4   MR. PAK: WE WILL PUT TOGETHER A COLLECTION OF THE

09:07:39 5 SUMMARY OF EXHIBITS.

09:07:39 6   THE COURT: AS I SAY, IF YOU WANT TO ARGUE THAT TO

09:07:41 7 THE JURY AND TELL THEM THE NUMBERS, THAT'S FINE. BUT I DON'T

09:07:44 8 EMPHASIZE EXHIBITS TO THE JURY.

09:07:46 9   MR. PAK: SO WE ARE CLEAR ON THE RECORD, YOUR HONOR,

09:07:48 10 I WILL TAKE OUT THE AUTHORSHIP. I WILL MAKE IT A CISCO COMMAND

09:07:51 11 EXPRESSION AND WE WILL SUBMIT IT AS A SUMMARY EXHIBIT.

09:07:54 12   THE COURT: OKAY. THAT SOUNDS GREAT.

09:07:55 13   AND THEN HAS OUR JURY ARRIVED?

09:07:58 14   THE CLERK: YES.

09:07:58 15   THE COURT: OKAY. WE ARE GOING TO RESUME WITH

09:08:00 16 DR. ALMEROTH'S CROSS-EXAMINATION?

09:08:03 17   MR. VAN NEST: THAT'S RIGHT, YOUR HONOR.

09:08:04 18   THE COURT: OKAY. ANY LACK OF ENERGY YOU HAD

09:08:09 19 YESTERDAY WILL BE RESTORED BY NOW.

09:08:12 20   YOU DIDN'T EXHIBIT ANY LACK OF ENERGY.

09:08:15 21   MR. VAN NEST: RESTORATION IS ALWAYS GOOD.

09:08:17 22   THE COURT: YES, IT IS. LET'S BRING OUR JURY IN.

09:08:21 23   (JURY IN AT 9:08 A.M.)

09:10:13 24   THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

09:10:17 25 GOOD MORNING, WE ARE BACK ON THE RECORD IN CISCO VERSUS ARISTA.

09:10:21	1	ALL OF OUR JURORS ARE HERE AND ALL COUNSEL AND PARTIES.
09:10:24	2	DR. ALMEROTH HAS RETURNED TO THE WITNESS STAND, AND I'M
09:10:26	3	GOING TO HAVE HIM SWORN FOR A NEW COURT DAY.
09:10:32	4	**(PLAINTIFF'S WITNESS, KEVIN ALMEROTH, WAS SWORN.)**
09:10:33	5	THE WITNESS: YES, MA'AM. I DO.
09:10:37	6	THE CLERK: PLEASE BE SEATED.
09:10:40	7	THE COURT: ALL RIGHT. MR. VAN NEST, YOU MAY
09:10:42	8	CONTINUE.
09:10:42	9	MR. VAN NEST: THANK YOU. GOOD MORNING, YOUR HONOR.
09:10:44	10	**CROSS-EXAMINATION (RESUMED)**
09:10:46	11	BY MR. VAN NEST:
09:10:46	12	Q. GOOD MORNING EVERYONE.
09:10:48	13	AND GOOD MORNING, DR. ALMEROTH.
09:10:49	14	A. GOOD MORNING, SIR.
09:10:50	15	Q. WE WERE TALKING YESTERDAY ABOUT THE VERSION 6 OF THE
09:10:55	16	INTERNET PROTOCOL BEFORE WE BROKE. DO YOU REMEMBER THE
09:10:57	17	EXCHANGE WE HAD?
09:10:58	18	A. YES, SIR, I DO.
09:10:59	19	Q. AND NETWORKING ENGINEERS ARE FAMILIAR WITH THE TERM IPV6
09:11:02	20	TO REFER TO THAT VERSION 6 OF THE INTERNET PROTOCOL; IS THAT
09:11:07	21	RIGHT?
09:11:07	22	A. YES, THAT'S ONE OF THE TERMS THAT IS USED.
09:11:09	23	Q. AND IT'S CUSTOMARY FOR NETWORK ENGINEERS TO USE THAT
09:11:12	24	PHRASE WHEN THEY ARE TAKING ABOUT THE PROTOCOL?
09:11:14	25	A. IT IS AMONG THE TERMS THAT ARE USED TO REFER TO THAT

09:11:17 1   PROTOCOL.

09:11:17 2   Q.   AND, IN FACT, WHEN YOU WRITE ABOUT VERSION 6 OF THE

09:11:21 3   PROTOCOL IT'S THE PHRASE YOU USE, IPV6; RIGHT?

09:11:25 4   A.   I HAVE USED THAT TERM, YES.

09:11:28 5   Q.   YOU WROTE A COUPLE OF ARTICLES IN BACK IN 2003, AND THEY

09:11:34 6   BOTH USE IPV6 IN THE TITLE?

09:11:37 7   A.   THAT'S CORRECT, AMONG OTHER TERMS FOR IPV6.

09:11:45 8   Q.   BUT WHAT YOU USED IN THE TITLE OF YOUR ARTICLES WAS IPV6?

09:11:51 9   A.   IN THIS INSTANCE, YES.

09:11:54 10   Q.   JUST LIKE WHAT'S IN THE PROTOCOL?

09:11:56 11   A.   YES.

09:11:57 12   Q.   AND JUST LIKE WHAT'S IN THE CISCO COMMANDS; RIGHT?

09:12:03 13   A.   NO.

09:12:05 14   Q.   LET'S PUT UP THE SPLIT SCREEN THAT WE HAD UP YESTERDAY.

09:12:19 15   WE HAD THERE ON THE LEFT, THOSE ARE COMMANDS THAT ARE ASSERTED

09:12:22 16   IN THIS CASE, RIGHT, DR. ALMEROTH?

09:12:26 17   A.   YES.

09:12:26 18   Q.   AND THEY USE IPV6 TO REFER TO VERSION 6 OF THE INTERNET

09:12:31 19   PROTOCOL, RIGHT?

09:12:31 20   A.   THEY DO.

09:12:33 21   Q.   AND THAT'S WHAT YOU USED FOR THE TITLE OF THE

09:12:36 22   SPECIFICATION, IPV6; RIGHT?

09:12:37 23   A.   IT IS, BUT THE CAPITALIZATION IS DIFFERENT. AS IT WAS IN

09:12:41 24   MY PAPER, AND YOU WILL NOTICE THAT THE USE OF LOWER CASE IN

09:12:45 25   THIS INSTANCE WAS A DESIGN CHOICE, IT'S PART OF WHAT MAKES IT

09:12:48 1   THE USER INTERFACE.

09:12:51 2   Q.   SO GOING FROM CAPITALS TO LOWER CASE, WHAT WAS THE CHOICE

09:12:54 3   THAT WAS MADE IN THIS INSTANCE?

09:12:56 4   A.   NO.   THAT WAS ONLY ONE OF THE CHOICES.   AS I TESTIFIED TO,

09:12:59 5   THERE WERE DIFFERENT WAYS OF REFERRING TO IPV6 USING DIFFERENT

09:13:02 6   LETTERS AND NAMES, AND THIS IS ONE THAT'S USED.

09:13:06 7   BUT WHAT I'M POINTING OUT HERE IS THAT THE CAPITALIZATION

09:13:09 8   IS, IN FACT, DIFFERENT.

09:13:10 9   Q.   I SEE.   BUT, IN FACT, WHAT WAS USED WAS THE SAME PHRASE,

09:13:15 10   IPV6, THAT'S IN THE TITLE OF THE PROTOCOL; RIGHT?

09:13:19 11   A.   I DON'T REALLY WANT TO QUIBBLE WITH YOU ABOUT WHAT A

09:13:23 12   PHRASE IS.

09:13:23 13   I THINK IT'S CLEAR THAT IN ONE INSTANCE THERE WAS

09:13:27 14   CAPITALIZATION AND THEN IN ANOTHER INSTANCE THERE WASN'T, AND

09:13:30 15   IN OTHER INSTANCES THERE'S DIFFERENT REFERENCES AND USE OF

09:13:32 16   DIFFERENT TERMS TO REFER TO IPV6.

09:13:34 17   Q.   NOW, THERE ARE ROUGHLY 45 OF THE COMMANDS AT ISSUE IN THIS

09:13:38 18   LAWSUIT THAT USE THIS IPV6 PHRASE.   RIGHT?

09:13:42 19   A.   THAT SOUNDS RIGHT.

09:13:43 20   Q.   OKAY.   NOW, THE TERM OSPF ALSO APPEARS IN THE DISPUTED

09:13:48 21   COMMANDS; RIGHT?

09:13:49 22   A.   YES.

09:13:50 23   Q.   THERE ARE ROUGHLY 35, 36 COMMANDS WITH THE PHRASE OSPF;

09:13:57 24   RIGHT?

09:13:57 25   A.   I BELIEVE THAT'S CORRECT.

09:13:59 1   Q.   AND OSPF, THAT'S ANOTHER INDUSTRY STANDARD?

09:14:03 2   A.   IT IS. IT STANDS FOR THE OPEN SHORTEST PATH FIRST

09:14:06 3   PROTOCOL.

09:14:06 4   Q.   OPEN SHORTEST PATH FIRST. AND NETWORK ENGINEERS

09:14:10 5   UNDERSTAND THAT THAT'S WHAT OSPF REFERS TO; RIGHT?

09:14:13 6   A.   GENERALLY, YES.

09:14:17 7   Q.   ARE YOU GENERALLY FAMILIAR WITH THE OSPF PROTOCOL?

09:14:22 8   A.   YES, SIR.

09:14:23 9   Q.   IT'S IN YOUR BINDER THERE AT TX 5038. WOULD YOU TAKE A

09:14:30 10   LOOK AT IT AND TELL ME WHETHER YOU RECOGNIZE IT.

09:14:46 11   A.   OKAY. I FOUND IT.

09:14:48 12   Q.   THAT'S THE OSPF PROTOCOL?

09:14:54 13   A.   WELL, TO BE CLEAR, THERE'S THREE VERSIONS OF OSPF. THIS

09:14:58 14   IS THE EARLIEST ONE. THERE'S A VERSION 2 AND A VERSION 3 AS

09:15:03 15   WELL.

09:15:03 16   Q.   FAIR ENOUGH.

09:15:05 17   MR. VAN NEST: I WOULD MOVE 503 INTO EVIDENCE,

09:15:07 18   YOUR HONOR.

09:15:07 19   THE COURT: ANY OBJECTION?

09:15:08 20   MR. PAK: NO OBJECTION, YOUR HONOR.

09:15:09 21   THE COURT: IT WILL BE ADMITTED.

09:15:18 22   (DEFENDANT'S EXHIBIT 503 WAS ADMITTED INTO EVIDENCE.)

09:15:18 23   BY MR. VAN NEST:

09:15:18 24   Q.   SO IN THIS CASE, IN THIS EARLY VERSION, OSPF, THAT WAS

09:15:22 25   USED RIGHT IN THE TITLE OF THE SPECIFICATION; RIGHT?

09:15:24 1   A.   THAT'S CORRECT.

09:15:24 2   Q.   AND OSPF, THAT'S THE SAME PHRASE THAT THE CISCO ENGINEERS

09:15:28 3   USED IN THE COMMANDS; RIGHT?

09:15:31 4   A.   I BELIEVE IN SOME INSTANCES, YES. I BELIEVE THAT IN SOME

09:15:38 5   OF THE COMMANDS THERE'S A DISTINCTION BETWEEN WHETHER IT'S

09:15:41 6   VERSION 2 OR VERSION 3.

09:15:42 7   Q.   FAIR ENOUGH.

09:15:44 8   A.   IN SOME INSTANCES IT REFERS TO ALL VERSIONS OF OSPF

09:15:47 9   DEPENDING ON THE CONFIGURATION.

09:15:49 10   Q.   AND YOU WOULDN'T BE SURPRISED TO KNOW THAT WHEN VERSION 2

09:15:52 11   IS REFERENCED IT'S OSPF V2, OR OSPF V3; RIGHT?

09:15:57 12   A.   THAT'S CORRECT. THAT'S ONE OF THE COMMON WAYS OF

09:16:00 13   REFERENCING IT.

09:16:01 14   Q.   RIGHT. AND NETWORKING ENGINEERS UNDERSTAND WHAT YOU ARE

09:16:04 15   TALKING ABOUT WHEN YOU SAY OSPF V2, OSPF V3; CORRECT?

09:16:08 16   A.   YES.

09:16:09 17   Q.   NOW, IN THE OSPF PROTOCOL, THERE ARE DEFINITIONS OF

09:16:18 18   COMMONLY USED TERMS THAT HAVE A SPECIFIC MEANING IN THE

09:16:22 19   PROTOCOL; RIGHT?

09:16:24 20   A.   YOU WOULD HAVE TO POINT ME TO WHERE YOU ARE TALKING ABOUT.

09:16:27 21   Q.   WELL, LET'S JUST GO PAGE 2. AND COULD WE BLOW UP THE VERY

09:16:32 22   TOP THERE WHERE IT SAYS DEFINITIONS OF COMMONLY USED TERMS.

09:16:36 23   THIS IS IN TRIAL EXHIBIT 503; CORRECT? AND I HAVE IT ON

09:16:42 24   THE SCREEN IF THAT'S EASIER FOR YOU DR. ALMEROTH.

09:16:45 25   A.   I DO. I WAS READING THE CONTEXT IN THE TITLE OF THE

09:16:48 1   PARAGRAPH THAT COMES RIGHT AFTER THAT.

09:16:49 2   Q.   THIS SAYS HERE'S A COLLECTION OF DEFINITIONS FOR TERMS

09:16:53 3   THAT HAVE A SPECIFIC MEANING TO THE PROTOCOL AND THAT ARE USED

09:16:57 4   THROUGHOUT THE TEXT.   THAT'S WHAT THIS SAYS?

09:17:01 5   A.   YES.

09:17:01 6   Q.   AND THEN IT GOES ON TO DEFINE A NUMBER OF TERMS; RIGHT?

09:17:05 7   A.   IT DOES.

09:17:06 8   Q.   INCLUDING ROUTER, THAT'S A DEFINED TERM?

09:17:08 9   A.   YES.

09:17:10 10   Q.   ROUTER ID, THAT'S A DEFINED TERM?

09:17:13 11   A.   THAT'S CORRECT.

09:17:14 12   Q.   INTERFACE, THAT'S A DEFINED TERM?

09:17:16 13   A.   YES.

09:17:16 14   Q.   NEIGHBORING ROUTERS, THAT'S A DEFINED TERM?

09:17:19 15   A.   YES, IT IS.

09:17:19 16   Q.   AND THAT ONE DEFINES NEIGHBORS OR DISCUSSES THE TERM

09:17:23 17   NEIGHBORS IN THE COURSE OF IT; RIGHT?

09:17:25 18   A.   IT DOES -- WELL, IT TALKS ABOUT NEIGHBORS.

09:17:28 19   Q.   OKAY.   IT USES THE WORD "NEIGHBORS" IN THE COURSE OF

09:17:33 20   DEFINING NEIGHBORING ROUTERS?

09:17:35 21   A.   THAT'S RIGHT.   IN THE COURSE OF THAT DEFINITION THE WORD

09:17:38 22   "NEIGHBORS" DOES APPEAR.

09:17:39 23   Q.   AND A LOT OF THESE TERMS ARE USED IN THE COMMANDS ALONG

09:17:44 24   WITH OSPF; RIGHT?

09:17:46 25   A.   I WOULD SAY A FAIR NUMBER ARE.   AND I THINK THAT WAS A

09:17:53 1   CHOICE THAT THE AUTHORS OF THOSE COMMANDS MADE.

09:17:55 2   Q.   LET'S TAKE A LOOK AT SLIDE 3, IF WE COULD.

09:18:04 3   OKAY.   THIS IS JUST SOME OF THE OSPF COMMANDS AT ISSUE,

09:18:06 4   DR. ALMEROTH; CORRECT?

09:18:08 5   A.   THAT'S CORRECT, IT LOOKS LIKE IT.

09:18:09 6   Q.   AND WE SEE -- WE SEE AT THE BOTTOM, LET'S WORK OUR WAY UP,

09:18:15 7   ROUTER ID -- COULD WE DO THE SPLIT SCREEN, PLEASE.   ROUTER ID,

09:18:20 8   THAT'S ONE OF THE PHRASES ACTUALLY DEFINED HERE IN THE PROTOCOL

09:18:25 9   RIGHT THERE ABOUT FOUR NOTES DOWN; RIGHT?

09:18:28 10   A.   THERE IS A ROUTER I DEFINED.   YOU WILL NOTICE THAT IT'S

09:18:32 11   LOWER CASE AND THE HYPHEN IS ADDED.   AGAIN, WHETHER TO HAVE THE

09:18:36 12   HYPHEN, WHETHER TO NAME IT THE ROUTER ID OR ANY OF THE OTHER

09:18:40 13   COMMANDS THAT USE OTHER TERMS WERE ALL CREATIVE DECISIONS.

09:18:44 14   Q.   ACTUALLY, MY QUESTION, DR. ALMEROTH WAS SIMPLY ROUTER ID

09:18:49 15   AS DEPICTED IN THE COMMAND.   IT'S ALSO DEFINED IN THE PROTOCOL?

09:18:53 16   A.   WELL, I THINK I ANSWERED THAT, AND I THINK THAT THERE ARE

09:18:56 17   DIFFERENCES THERE, ESPECIALLY SIGNIFICANT TO THE WAY THAT THE

09:19:00 18   COMMANDS ARE ORGANIZED IN THE HIERARCHY.

09:19:03 19   SO EVEN THOUGH THE CONCEPT IS THE SAME, THE WORD CHOICE

09:19:06 20   AND THE LETTER CHOICE, THE FORMATTING, THOSE ARE ALL THINGS

09:19:10 21   THAT MAKE A DIFFERENCE TO A PARSER, FOR EXAMPLE.   MAKE A

09:19:14 22   DIFFERENCE TO AN ENGINEER, AND, THEREFORE, ARE PART OF THE

09:19:17 23   CREATIVE CHOICE.

09:19:17 24   Q.   BUT THERE'S NO DOUBT THAT THE ROUTER ID CONCEPT THAT'S IN

09:19:21 25   THIS COMMAND COMES FROM THE PROTOCOL; RIGHT?

09:19:24 1   A.   THAT'S CORRECT. I THINK IT WAS A GOOD DESIGN DECISION, A

09:19:27 2   GOOD CHOICE TO TIE THOSE TWO CLOSER.

09:19:31 3   Q.   RIGHT. THEY CHOSE A WORD THAT WAS ALREADY KNOWN AND WAS

09:19:34 4   IN THE PROTOCOL?

09:19:35 5   A.   I WOULDN'T AGREE WITH THAT.

09:19:36 6   Q.   ALL RIGHT. LET'S LOOK JUST ABOVE IT. ROUTER, THAT'S

09:19:41 7   ANOTHER DEFINED TERM IN THE PROTOCOL; RIGHT?

09:19:44 8   A.   YES.

09:19:44 9   Q.   "NEIGHBOR" IS A DEFINED TERM. THE NEXT ONE SAYS, "SPOF,"

09:19:52 10   "SHOW IT," NEIGHBOR RUNS WITH THE IP PROTOCOL; RIGHT?

09:19:58 11   A.   I DON'T BELIEVE IT'S LIMITED TO THE IP.

09:20:01 12   Q.   BUT CERTAINLY RUNS OVER THE IP PROTOCOL?

09:20:03 13   A.   IT CAN, WHICH IS WHY IN THIS HIERARCHY YOU HAVE THE

09:20:07 14   ADDITIONAL LEVEL THAT SPECIFIES THAT IT'S FOR IP.

09:20:10 15   Q.   SO IN THE THIRD FROM THE BOTTOM, IP OSPF, NEIGHBOR IS ONE

09:20:14 16   OF THE TERMS THAT'S DISCUSSED HERE IN THE PROTOCOL ITSELF;

09:20:20 17   RIGHT?

09:20:20 18   A.   THE TERM IS USED IT DOES APPEAR IN THE RFC.

09:20:24 19   Q.   AND INTERFACE, OSPF INTERFACE IS ALSO DEFINED, RIGHT, IN

09:20:28 20   THE PROTOCOL; CORRECT? IT'S ABOUT TWO-THIRDS OF THE WAY DOWN

09:20:33 21   THE PAGE.

09:20:35 22   A.   I DO SEE THAT. I THINK THE CONCEPT OF THE INTERFACE IS

09:20:38 23   IT'S USED IN THE ROUTER, WHICH REFERS SPECIFICALLY TO THE

09:20:41 24   ROUTER INTERFACE. IT MIGHT BE DIFFERENT THAN THAT DEFINITION.

09:20:46 25   I THINK IT IS.

09:20:50 1   FOR EXAMPLE, SO THE LAST SENTENCE OF THAT DEFINITION SAYS,

09:20:53 2   AN INTERFACE IS SOMETIMES ALSO REFERRED TO AS A LINK, AND

09:20:56 3   THAT'S NOT WHAT INTERFACE MEANS WHEN YOU ARE CONFIGURING OSPF.

09:21:02 4   BUT THE INTERFACE OR THE ROUTER OR THE SWITCH IS THE PHYSICAL

09:21:05 5   PORT.

09:21:05 6   Q.   CERTAINLY, THOUGH, THE WORD "INTERFACE" IS DEFINED IN THE

09:21:08 7   PROTOCOL AND THAT WORD IS USED IN THE COMMAND; RIGHT?

09:21:13 8   A.   IT CERTAINLY IS THE SAME LETTERS, IT'S THE SAME WORD.

09:21:15 9   Q.   AND WE CAN LOOK AT IT, BUT THE CONCEPT OF HELLO INTERVAL

09:21:20 10   AND COST, THOSE TWO CONCEPTS, THEY ARE ALSO DISCUSSED IN THIS

09:21:26 11   PROTOCOL, AREN'T THEY?

09:21:28 12   THEY ARE NOT ON THIS PAGE, BUT WE COULD LOOK AT THEM. YOU

09:21:31 13   ARE FAMILIAR WITH NETWORKING TERMS, DR. ALMEROTH, YOU KNOW THAT

09:21:33 14   COST IS A TERM COMMONLY ASSOCIATED WITH THE OSPF PROTOCOL?

09:21:38 15   A.   NO, THAT'S NOT TRUE. IT'S ASSOCIATED WITH LOTS OF

09:21:41 16   DIFFERENT PROTOCOLS, IN GENERAL, COMPUTER SCIENCE CONCEPTS.

09:21:45 17   Q.   IT'S DISCUSSED HERE I BELIEVE AT PAGE 51. OKAY. THE WE

09:21:54 18   HAVE PAGE 51 UP THERE NOW. YOU SEE THE TERM COST IS DISCUSSED

09:21:59 19   IN THIS PROTOCOL?

09:22:00 20   A.   I DO. LET ME READ THAT DEFINITION, PLEASE. OKAY.

09:22:12 21   Q.   SO COST IS CERTAINLY A RELEVANT TERM TO USE WHEN TALKING

09:22:17 22   ABOUT OSPF PROTOCOL; RIGHT?

09:22:18 23   A.   WELL, NOW WE WOULD HAVE TO GO BACK AND LOOK AT THE MANUAL

09:22:22 24   WHERE THAT COMMAND IS DEFINED TO SEE IF IT'S THE SAME TYPE OF

09:22:26 25   COST, AND, IN FACT, I BELIEVE IT'S DIFFERENT.

09:22:27 1   Q.   BUT, IN FACT, THE TERM IS USED BOTH IN THE PROTOCOL AND

09:22:30 2   IT'S USED IN THE COMMAND; CORRECT?

09:22:32 3   A.   YES, I THINK THAT THE FACT THAT YOU HAVE THE SAME LETTERS

09:22:35 4   OF THE SAME WORD, THOUGH THE CAPITALIZATION IS DIFFERENT, AS IT

09:22:44 5   IS FOR THE HELLO INTERVAL DEMONSTRATES THERE ARE DIFFERENCES

09:22:47 6   BETWEEN THE WORDS, AND JUST BECAUSE THE WORD APPEARS IN THE

09:22:51 7   STANDARD DOESN'T MEAN THERE'S A CHOICE MADE BY THE PERSON.

09:22:54 8   Q.   OKAY. BUT ONE CHOICE THAT WAS MADE WAS TO USE THE TERM

09:22:57 9   THAT'S IN THE STANDARD; RIGHT?

09:22:58 10   A.   THAT COULD HAVE BEEN A CHOICE. AND JUST BECAUSE A WORD

09:23:04 11   APPEARS IN THE STANDARD DOESN'T MEAN THAT THE INVERSE IS TRUE.

09:23:09 12   IF THE WORD WAS CHOSEN BECAUSE IT IS IN THE STANDARD.

09:23:12 13   Q.   I SEE. ARE YOU TELLING US THIS IS JUST A COINCIDENCE?

09:23:16 14   A.   NO, I'M NOT SAYING IT'S A COINCIDENCE BUT JUST BECAUSE THE

09:23:19 15   WORD IS IN THE STANDARD DOESN'T MEAN THAT'S WHY IT WAS CHOSEN

09:23:21 16   TO GO INTO THE COMMAND.

09:23:23 17   Q.   NOW, HELLO INTERVAL IS THE LAST ONE ON THIS SLIDE. HELLO

09:23:27 18   INTERVAL IS ALSO A DEFINED TERM IN THIS PROTOCOL; CORRECT?

09:23:31 19   A.   YES. AND YOU WILL NOTE THAT THERE ARE SUBTLE BUT

09:23:36 20   IMPORTANT DIFFERENCES BETWEEN WHAT THE COMMAND IS AND HOW IT'S

09:23:39 21   DESCRIBED IN THIS RFC.

09:23:41 22   Q.   NOW, THE TERM SNMP, THAT ALSO APPEARS IN MANY DISPUTED

09:23:45 23   COMMANDS; RIGHT?

09:23:47 24   A.   I'M NOT SURE OF THE COUNT.

09:23:49 25   Q.   IT'S APPROXIMATELY 27.

09:23:51 1   A.   OKAY.

09:23:52 2   Q.   DOES THAT SEEM ABOUT RIGHT?

09:23:53 3   A.   IT IS. YOU HAVE THE NOTES. I DON'T HAVE THEM ALL

09:23:57 4   MEMORIZED.

09:23:57 5   Q.   AND SNMP, THAT'S ANOTHER INDUSTRY STANDARD PROTOCOL,

09:24:01 6   RIGHT?

09:24:01 7   A.   IT IS. THE SIMPLE NETWORK MANAGEMENT PROTOCOL.

09:24:03 8   Q.   AND NETWORKING ENGINEERS ARE ACCUSTOMED AND FAMILIAR WITH

09:24:07 9   THAT PHRASE?

09:24:08 10   A.   WITH THAT PHRASE, AGAIN, THERE ARE MULTIPLE VERSIONS OF

09:24:11 11   SNMP, AS THERE ARE WITH OSPF AND IP.

09:24:16 12   Q.   BUT SNMP IS USED TO REFER TO THIS PROTOCOL, SIMPLE NETWORK

09:24:21 13   MANAGEMENT PROTOCOL?

09:24:22 14   A.   GENERALLY, THAT'S TRUE. TECHNICALLY -- USUALLY THE WAY

09:24:26 15   THAT IT IS, IS, FOR EXAMPLE, IF YOU ARE REFERRING TO IP, IT

09:24:29 16   INCLUDES BOTH IP V4 AND IP V6. IF YOU WANT TO DISTINGUISH

09:24:36 17   BETWEEN THE VERSIONS, THEN YOU WILL ADD SOMETHING LIKE V6 OR

09:24:39 18   VERSION 6.

09:24:41 19   Q.   SURE.

09:24:41 20   A.   THE SAME THING APPLIES TO SNMP.

09:24:43 21   Q.   AND WOULD YOU OPEN YOUR BINDER -- ARE YOU GENERALLY

09:24:45 22   FAMILIAR WITH THIS PROTOCOL?

09:24:46 23   A.   YES.

09:24:47 24   Q.   WOULD YOU OPEN YOUR BINDER TO TX 5131, PLEASE.

09:24:55 25   IS THAT THE PROTOCOL, OR A VERSION OF IT?

09:24:57 1   A.   THIS IS. IT'S BOTH WITH OSPF AND SNMP, THESE WERE LATER

09:25:07 2   OBSOLETED BY UPDATED STANDARDS.

09:25:09 3   Q.   RIGHT. BUT THIS IS THE EARLIEST ONE BACK IN 1988; RIGHT?

09:25:12 4   A.   IT'S A VERY RUDIMENTARY VERSION BUT, YES, IT'S THE SIMPLE

09:25:21 5   NETWORK MANAGEMENT PROTOCOL AS ORIGINALLY DEFINED.

09:25:24 6   MR. VAN NEST: I MOVE 5131 INTO EVIDENCE YOUR HONOR.

09:25:26 7   THE COURT: ANY OBJECTION?

09:25:27 8   MR. NELSON: NO OBJECTION YOUR HONOR.

09:25:28 9   THE COURT: OKAY. IT WILL BE ADMITTED.

09:25:30 10   (DEFENDANT'S EXHIBIT 5131 WAS ADMITTED INTO EVIDENCE.)

09:25:30 11   MR. VAN NEST: LET'S DISPLAY FOR THE JURY OURS

09:25:34 12   BRIEFLY. SNMP, SIMPLE NETWORK MANAGEMENT PROTOCOL. THAT'S THE

09:25:37 13   TITLE.

09:25:38 14   Q.   AND YOU WILL SEE ON LINE 3 THERE THE SNMP ARCHITECTURE,

09:25:42 15   THOSE INITIALS ARE COMMONLY USED TO REFER TO THIS PROTOCOL;

09:25:45 16   RIGHT?

09:25:45 17   A.   THAT'S TRUE.

09:25:46 18   Q.   AND WHOEVER CREATED THE COMMAND AT CISCO USED THOSE SAME

09:25:53 19   INITIALS TO REFER TO THE SAME PROTOCOL; RIGHT?

09:25:55 20   A.   THEY DID MAKE THAT CHOICE.

09:25:57 21   Q.   AND ONE REASON TO MAKE THAT CHOICE IS THAT THAT ACRONYM,

09:26:02 22   THAT PHRASE, THAT WAS FAMILIAR TO AND KNOWN BY NETWORK

09:26:05 23   ENGINEERS; RIGHT?

09:26:06 24   A.   THAT'S ONE OF THE CRITERION THAT COULD HAVE GONE INTO THE

09:26:09 25   SELECTION OF THAT ACRONYM FOR THE COMMAND.

09:26:11 1   Q.   NOW, WE HEARD EARLIER ABOUT BGP, THAT'S ANOTHER PROTOCOL;

09:26:16 2   RIGHT?

09:26:16 3   A.   YES, SIR.

09:26:16 4   Q.   BORDER GATEWAY PROTOCOL?

09:26:18 5   A.   YES.

09:26:18 6   Q.   WE HEARD SOME DISCUSSION ABOUT THAT FROM MR. LOUGHEED?

09:26:21 7   A.   YES.

09:26:22 8   Q.   RIGHT? AND THE -- BGP IS ANOTHER TERM THAT'S USED IN MANY

09:26:26 9   OF THE COMMANDS AT ISSUE IN THE CASE; RIGHT?

09:26:28 10   A.   AGAIN, I DON'T HAVE THE COUNT. I'M SURE YOU HAVE IT RIGHT

09:26:32 11   IN FRONT OF YOU.

09:26:33 12   Q.   I THINK THE COUNT IS ABOUT 24. DOES THAT SOUND ABOUT

09:26:36 13   RIGHT?

09:26:36 14   A.   THAT SOUNDS ABOUT RIGHT.

09:26:37 15   Q.   OKAY. THE TERM SPANNING-TREE APPEARS IN A NUMBER OF

09:26:42 16   DISPUTED COMMANDS; CORRECT?

09:26:43 17   A.   IT DOES.

09:26:44 18   Q.   I HAVE AS COUNT THERE 23 OF THE COMMANDS AT ISSUE ARE

09:26:49 19   SPANNING-TREE?

09:26:49 20   A.   OKAY.

09:26:50 21   Q.   NOW SPANNING-TREE, THAT'S ANOTHER INDUSTRY STANDARD

09:26:55 22   PROTOCOL; RIGHT?

09:26:55 23   A.   NO. SPANNING-TREE BY ITSELF, USUALLY THERE'S AN ACRONYM,

09:27:03 24   STP, FOR THE SPANNING-TREE PROTOCOL. YOU CAN REFER TO IT AS

09:27:09 25   STP TO REFERENCE THE PROTOCOL SPECIFICALLY.

09:27:13 1   Q.   THERE IS -- THERE IS AN INDUSTRY STANDARD, THOUGH,

09:27:18 2   INVOLVING SPANNING-TREE; RIGHT?

09:27:20 3   A.   I BELIEVE THERE IS. I'M NOT AS FAMILIAR WITH THAT

09:27:23 4   STANDARD. YOU COULD CERTAINLY LOOK AT THE RFC IF YOU HAVE IT.

09:27:29 5   Q.   I HAVE IT, IT'S TX 6952. THAT MIGHT BE IN A DIFFERENT

09:27:33 6   NOTEBOOK, BUT WE'VE GOT IT THERE FOR YOU. 6952.

09:27:37 7   MR. NELSON: IS THAT?

09:27:52 8   MR. VAN NEST: 6952.

09:27:55 9   MR. NELSON: THANK YOU.

09:27:57 10   BY MR. VAN NEST:

09:27:57 11   Q.   IS THAT ONE OF THE PROTOCOLS THAT PERTAINS TO THE

09:28:00 12   SPANNING-TREE PROTOCOL, DR. ALMEROTH?

09:28:02 13   A.   THIS IS FOR MAC BRIDGES FROM IEEE. SPANNING-TREE MIGHT BE

09:28:14 14   DEFINED IN HERE. I BELIEVE IT IS.

09:28:15 15   Q.   ALL RIGHT. ARE YOU GENERALLY FAMILIAR WITH BOTH OF THOSE

09:28:18 16   PROTOCOLS?

09:28:18 17   A.   I DON'T THINK MAC BRIDGES IS A PROTOCOL, IT'S KIND OF AN

09:28:23 18   UMBRELLA DOCUMENT.

09:28:24 19   Q.   ALL RIGHT. BUT YOU'RE FAMILIAR WITH THE CONCEPT?

09:28:27 20   A.   YES, SIR.

09:28:27 21   MR. VAN NEST: ALL RIGHT. I WOULD OFFER 6952 IN

09:28:30 22   EVIDENCE, YOUR HONOR.

09:28:31 23   MR. NELSON: I DON'T HAVE ANY OBJECTION, YOUR HONOR.

09:28:32 24   THE COURT: IT WILL BE ADMITTED.

09:28:34 25   (DEFENDANT'S EXHIBIT 6952 WAS ADMITTED INTO EVIDENCE.)

09:28:34 1   BY MR. VAN NEST:

09:28:35 2   Q.   AND IF WE COULD GO TO PAGE 4, MR. DAHM.

09:28:40 3   AND SPANNING-TREE ALGORITHM AND PROTOCOL IS DISCUSSED IN

09:28:44 4   THIS DOCUMENT, IS IT NOT, DR. ALMEROTH --

09:28:55 5   WHOOPS. MAYBE IT'S PAGE 49. I'M SORRY, MR. DAHM. THERE

09:28:59 6   IT IS.

09:29:00 7   SO SPANNING-TREE PROTOCOL, THAT'S A PHRASE THAT NETWORK

09:29:05 8   ENGINEERS WOULD UNDERSTAND.

09:29:07 9   A.   THEY WOULD, AND AS I'VE DESCRIBED, USUALLY IT'S REFERENCED

09:29:12 10   AS STP.

09:29:14 11   Q.   ALL RIGHT. BUT IN THE COMMANDS THAT ARE AT ISSUE IN THIS

09:29:17 12   CASE IT'S REFERRED TO AS SPANNING-TREE; RIGHT?

09:29:20 13   A.   I BELIEVE SPANNING-TREE. AND I THINK THAT'S A GREAT

09:29:26 14   EXAMPLE THAT ILLUSTRATES THE CHOICE BETWEEN WHETHER YOU USE

09:29:28 15   SOMETHING LIKE SPANNING-TREE, SPANNING-TREE, STP OR ANY ONE OF

09:29:38 16   A VARIETY OF OTHER DIFFERENT OPTIONS.

09:29:40 17   Q.   BUT CERTAINLY THE WORD "SPANNING-TREE" APPEARED FIRST IN

09:29:43 18   PROTOCOL AND THEN LATER IN THE COMMAND; RIGHT?

09:29:45 19   A.   I BELIEVE THAT'S CORRECT.

09:29:49 20   Q.   OKAY. AND YOU'VE USED THE WORD "SPANNING-TREE" YOURSELF?

09:29:55 21   A.   I BELIEVE I HAVE. I SUSPECT YOU HAVE A PUBLICATION.

09:29:59 22   Q.   WELL, NO, I'M SPEAKING OF SOME SOFTWARE THAT YOU PUBLISHED

09:30:02 23   THAT YOU CALLED SPANNING-TREE OR RELATED TO SPANNING-TREE, BACK

09:30:05 24   IN 2006. DO YOU RECALL THAT?

09:30:07 25   A.   I DO. I DON'T RECALL WHICH ONE IT WAS, SPECIFICALLY.

09:30:11   1   Q.   FAIR ENOUGH.

09:30:12   2   NOW, THE TERM IGMP --

09:30:15   3   A.   OH, I'M SORRY. ONE ADDITIONAL NOTE ABOUT THAT. THAT WAS

09:30:18   4   NOT -- I DON'T BELIEVE THAT WAS AN IMPLEMENTATION OF THE

09:30:22   5   SPANNING-TREE PROTOCOL.

09:30:22   6   Q.   OKAY. FAIR ENOUGH.

09:30:24   7   THE TERM IGMP, THAT ALSO APPEARS IN MANY DISPUTED

09:30:30   8   COMMANDS?

09:30:30   9   A.   AGAIN, I DON'T HAVE THE COUNT.

09:30:32   10   Q.   I HAVE THE COUNT AT 21. DOES THAT SEEM RIGHT?

09:30:34   11   A.   OKAY. I THINK 21 OUT OF 50 VERSION 6 IS PROBABLY NOT

09:30:39   12   MANY.

09:30:39   13   Q.   WELL, IT IS WHAT IT IS.

09:30:41   14   A.   I AGREE, YOUR CHARACTERIZATION WAS MANY --

09:30:44   15   Q.   FAIR ENOUGH. FAIR ENOUGH. 21.

09:30:47   16   AND THAT'S ANOTHER INDUSTRY STANDARD PROTOCOL, IGMP;

09:30:51   17   RIGHT.

09:30:51   18   A.   YES. THERE'S, AGAIN, VERSION 1, VERSION 2, AND VERSION 3.

09:30:56   19   Q.   AND IT MEANS INTERNET GROUP MANAGEMENT PROTOCOL; RIGHT?

09:30:59   20   A.   YES, SIR.

09:31:00   21   Q.   NETWORK ENGINEERS WOULD UNDERSTAND THAT?

09:31:02   22   A.   GENERALLY, YES.

09:31:03   23   Q.   AND IT'S A FAMILIAR TERM TO THEM?

09:31:05   24   A.   YES.

09:31:06   25   Q.   THERE ARE VARIOUS VERSIONS OF IT?

09:31:08 1   A.   YES.

09:31:08 2   Q.   AND LET'S TAKE A LOOK AT VERSION 2 IN YOUR NOTEBOOK, 6877,

09:31:20 3   TX 6877. AND TELL ME WHETHER YOU RECOGNIZE THAT.

09:31:25 4   A.   SORRY, I DIDN'T REALIZE IT WAS IN VOLUME II.

09:31:47 5   Q.   SORRY.

09:31:55 6   DO YOU RECOGNIZE 6877 AS VERSION 2?

09:31:58 7   A.   YES.

09:31:59 8   MR. VAN NEST: I WOULD OFFER 6877 IN EVIDENCE,

09:32:01 9   YOUR HONOR.

09:32:02 10   MR. NELSON: NO OBJECTION, YOUR HONOR.

09:32:03 11   THE COURT: IT WILL BE ADMITTED.

09:32:05 12   (DEFENDANT'S EXHIBIT 6877 WAS ADMITTED INTO EVIDENCE.)

09:32:05 13   MR. VAN NEST: COULD WE DISPLAY IT, PLEASE, MR. DAHM.

09:32:10 14   Q.   OKAY. THIS IS THE INTERNET GROUP MANAGEMENT PROTOCOL.

09:32:13 15   AND YOU SEE DOWN THERE IN THE ABSTRACT, IT'S REFERRED TO JUST

09:32:16 16   THE WAY YOU DID AS IGMP V2?

09:32:20 17   A.   YES.

09:32:22 18   Q.   NOW, THIS DOCUMENT ALSO HAS SOME DEFINITIONS IN IT, DOES

09:32:26 19   IT NOT?

09:32:36 20   MR. VAN NEST: LET'S GO TO -- CAN WE PULL UP THE

09:32:38 21   DEFINITIONS, MR. DAHM.

09:32:41 22   Q.   THEY ARE ON A COUPLE OF PAGES. LET'S START WITH THIS ONE.

09:32:47 23   QUERY INTERVAL, I'VE GOT THEM ON THE SCREEN BECAUSE IT MAY BE A

09:32:50 24   LITTLE BIT EASIER.

09:32:51 25   A.   I WAS JUST CONFUSED BECAUSE SECTION 1 IS ENTITLED

09:32:54 1   DEFINITIONS. THIS IS NOT A SECTION ENTITLED DEFINITIONS.

09:32:58 2   Q.   WELL, LET'S GO BACK TO PAGE 48, OR WHICHEVER PAGE WE ARE

09:33:08 3   ON HERE, I HAVE IT ON THE SCREEN. QUERY INTERVAL IS A CONCEPT

09:33:11 4   DISCUSSED IN THE PROTOCOL?

09:33:13 5   A.   IT IS, IT'S ONE OF THE TIMERS.

09:33:16 6   Q.   AND THERE ARE A NUMBER OF OTHER TERMS DEFINED HERE AS

09:33:19 7   WELL; RIGHT?

09:33:20 8   A.   WELL, AGAIN, I DON'T THINK THIS IS A DEFINITION OF TERMS.

09:33:23 9   I THINK IT'S, AS SECTION 8 DESCRIBES, IT'S A LIST OF TIMERS AND

09:33:28 10   DEFAULT VALUES.

09:33:29 11   Q.   OKAY. BUT THEY'RE CERTAINLY DISCUSSED. AT THE BOTTOM OF

09:33:35 12   THE PAGE, STARTUP-QUERY-INTERVAL, IT'S A DISCUSSED TERM?

09:33:39 13   A.   IT'S -- IT IS.

09:33:41 14   Q.   STARTUP-QUERY-COUNT, THAT'S A DISCUSSED TERM?

09:33:46 15   A.   IT IS LISTED THERE.

09:33:48 16   Q.   AND ON THE NEXT PAGE WE'VE GOT SOME MORE THAT ARE

09:33:51 17   DISCUSSED IN THIS PROTOCOL. LAST MEMBER QUERY INTERVAL, LAST

09:33:55 18   MEMBER QUERY COUNT. AND SEVERAL OTHERS AS WELL?

09:33:59 19   A.   I SEE THOSE.

09:34:00 20   Q.   AND THESE ARE ALL PHRASES THAT ARE INCLUDED IN SOME OF THE

09:34:06 21   COMMANDS AT ISSUE IN THIS LAWSUIT; RIGHT?

09:34:11 22   A.   I DON'T BELIEVE THEY ARE.

09:34:16 23   MR. VAN NEST: COULD WE PUT UP SLIDE 4, PLEASE.

09:34:18 24   Q.   I WILL REPRESENT TO YOU, DR. ALMEROTH, THAT THESE LONG

09:34:26 25   FOUR- OR FIVE-WORD PHRASES ARE ALL AMONG THE 506 THAT YOU

09:34:32   1   IDENTIFIED YESTERDAY. DO YOU THINK THAT'S RIGHT?

09:34:34   2   A.   I DO. AND YOU WILL NOTE THE DIFFERENCE BETWEEN THE WAY

09:34:37   3   THAT THEY ARE REPRESENTED IN THE IGMP V2 STANDARD AND THE WAY

09:34:43   4   THAT THEY ARE DESCRIBED HERE.

09:34:44   5   Q.   WELL, LET'S START AT THE TOP THERE. NOW, AGAIN, THE IGMP

09:34:49   6   STANDARD, IT RUNS IN CONNECTION WITH THE IP STANDARD; RIGHT?

09:34:55   7   A.   GENERALLY, IT DOES.

09:34:56   8   Q.   OKAY. SO IP, WE'VE TALKED ABOUT THAT, IGMP, QUERY

09:35:02   9   INTERVAL, THAT'S ONE OF THE TERMS WE JUST LOOKED AT THAT'S

09:35:05   10   DISCUSSED IN THE PROTOCOL ITSELF; RIGHT?

09:35:07   11   A.   NO, IT'S NOT. IT'S DIFFERENT. IT USES A DIFFERENT

09:35:12   12   SYNTAX, IT USES A HYPHEN, IT USES LOWER CASE, JUST LIKE JUST

09:35:17   13   LIKE IN SECTION 8.2 THAT LISTS QUERY INTERVAL, THE PERSON WHO

09:35:21   14   DESIGNED THIS COMMAND HAD A CHOICE WHETHER TO INCLUDE THE

09:35:24   15   HYPHEN, WHETHER TO INCLUDE THE CAPITALIZATION. YOU CAN USE

09:35:27   16   OTHER WORDS OTHER THAN QUERY INTERVAL.

09:35:30   17   Q.   MY QUESTION WAS A LITTLE MORE SIMPLE, DR. ALMEROTH.

09:35:34   18   DOESN'T THE TERM QUERY INTERVAL, ISN'T THAT DISCUSSED IN THE

09:35:37   19   PROTOCOL AS WE JUST SAW?

09:35:39   20   A.   THE TERM, THERE'S A SECTION -- WELL, YOUR TERM IS

09:35:42   21   AMBIGUOUS, WHETHER YOU ARE TALKING ABOUT THE COMMAND OR WHETHER

09:35:45   22   YOU ARE TALKING ABOUT WHAT'S DESCRIBED IN THE MANUAL. THOSE

09:35:49   23   TWO ARE DIFFERENT THINGS.

09:35:51   24   Q.   I DON'T WANT TO TALK ABOUT HYPHENS FOR NOW, WE WILL GET TO

09:35:53   25   THAT.

09:35:55 1   A.   OKAY.

09:35:55 2   Q.   I WANT TO TALK ABOUT WORDS.

09:35:57 3   THE WORDS QUERY INTERVAL, THEY ARE DISCUSSED IN THE

09:36:00 4   STANDARD ITSELF; RIGHT?

09:36:02 5   A.   THOSE WORDS ARE DISCUSSED IN THE STANDARD.

09:36:04 6   Q.   WE JUST SAW THAT.

09:36:06 7   AND SO IS LAST MEMBER QUERY COUNT; RIGHT?

09:36:13 8   A.   THERE IS A DISCUSSION OF THAT TIMER, DIFFERENT WORDS, BUT

09:36:18 9   OKAY.

09:36:18 10   Q.   AND LAST MEMBER QUERY INTERVAL, IT'S DISCUSSED IN THE

09:36:21 11   PROTOCOL?

09:36:21 12   A.   IT'S THE SAME THING.

09:36:24 13   Q.   AND STARTUP-QUERY-COUNT, THAT'S DISCUSSED IN THE PROTOCOL?

09:36:29 14   A.   IT'S VERY SIMILAR, BUT NOT THE SAME.

09:36:32 15   Q.   AND STARTUP-QUERY-INTERVAL, THAT'S DISCUSSED IN THE

09:36:35 16   PROTOCOL?

09:36:36 17   A.   VERY SIMILAR BUT NOT THE SAME.

09:36:37 18   Q.   AND INTERFACE, GROUP AND GROUPS, THOSE ARE ALL DISCUSSED

09:36:40 19   IN THE PROTOCOL TOO?

09:36:41 20   A.   AGAIN, THOSE GENERAL CONCEPTS, THOSE PARTICULAR WORDS

09:36:45 21   MIGHT APPEAR. I DON'T KNOW IF THOSE PARTICULAR WORDS IN THAT

09:36:49 22   ORDER APPEAR. BUT, AGAIN, REGARDLESS OF WHETHER THEY APPEAR IN

09:36:53 23   THE STANDARD DOESN'T MEAN THAT THE PERSON WHO WROTE THESE

09:36:56 24   COMMANDS DIDN'T HAVE A CHOICE.

09:36:58 25   Q.   NOW, COULD WE PUT UP THE SIDE BY SIDE PLEASE, MR. DAHM.

09:37:08 1   SO IT'S CLEAR FROM THIS THAT WHOEVER DESIGNED THESE

09:37:12 2   COMMANDS WAS MAKING REFERENCE, AT MINIMUM, TO CONCEPTS THAT

09:37:20 3   WERE DISCUSSED IN THE PROTOCOL ITSELF; RIGHT?

09:37:22 4   A.   I THINK THAT'S GENERALLY TRUE. I THINK WHOEVER WAS

09:37:25 5   IMPLEMENTING THESE COMMANDS FOR CISCO WAS AWARE OF WHAT WAS IN

09:37:31 6   THE STANDARD AND HOW THE PROTOCOL OPERATES.

09:37:33 7   Q.   AND, THEREFORE, CHOSE TERMS FROM THE STANDARD THAT WOULD

09:37:38 8   BE FAMILIAR TO NETWORK ENGINEERS; RIGHT?

09:37:40 9   A.   I THINK THAT COULD HAVE BEEN ONE OF THE DESIGN

09:37:42 10   CONSIDERATIONS, SINCE THERE ARE DIFFERENCES HERE, CLEARLY THERE

09:37:46 11   WERE OTHER FACTORS AT PLAY, AND HOW THESE WERE ORGANIZED AND

09:37:53 12   WHAT HIERARCHY WAS SELECTED ALL COME INTO PLAY.

09:37:55 13   Q.   NOW, THERE WERE MANY, MANY OTHER PROTOCOLS THAT ARE

09:37:57 14   RELEVANT TO THE COMMANDS AT ISSUE IN THIS CASE; RIGHT?

09:38:00 15   A.   YOU SAID MANY TWO TIMES. I WOULD ACTUALLY AGREE, THERE

09:38:05 16   ARE A VERY LARGE NUMBER OF PROTOCOLS.

09:38:07 17   Q.   OKAY. THE PIM PROTOCOL APPEARS IN ROUGHLY 20 OF THE

09:38:11 18   COMMANDS?

09:38:12 19   A.   PROTOCOL INDEPENDENT MULTITASK, YES.

09:38:15 20   Q.   THAT'S AN INDUSTRY STANDARD PROTOCOL AS WELL?

09:38:17 21   A.   IT IS.

09:38:18 22   Q.   YOU ARE FAMILIAR WITH THAT? YOU ARE A PARTICIPANT IN IT?

09:38:22 23   A.   YES.

09:38:23 24   Q.   OKAY. WOULD YOU LOOK AT YOUR NOTEBOOK AT TX 6870, PLEASE,

09:38:36 25   AND TELL ME WHETHER YOU RECOGNIZE THAT DOCUMENT.

09:38:39 1   A.   I DO.

09:38:39 2   Q.   IS THAT ONE VERSION OF THE PIM PROTOCOL SPECIFICATION?

09:38:45 3   A.   IT IS.

09:38:46 4   MR. VAN NEST: I WOULD MOVE 6870 IN EVIDENCE,

09:38:50 5   YOUR HONOR?

09:38:51 6   THE COURT: ANY OBJECTION?

09:38:52 7   MR. NELSON: NO OBJECTION.

09:38:53 8   THE COURT: IT WILL BE ADMITTED.

09:38:56 9   (DEFENDANT'S EXHIBIT 6870 WAS ADMITTED INTO EVIDENCE.)

09:38:56 10   BY MR. VAN NEST:

09:38:56 11   Q.   THAT EXPRESSION, PIM, IS WELL KNOWN TO NETWORK ENGINEERS?

09:39:04 12   A.   GENERALLY, IT IS. AND AS THIS IDENTIFIES, THERE'S TWO

09:39:08 13   DIFFERENT VARIANTS OF PIM, THERE'S A DENSE MODE AND THEN THIS

09:39:12 14   ONE DISCUSSES THE SPARSE MODE VERSION.

09:39:15 15   Q.   AND, IN FACT, IN YOUR REPORT YOU REFER TO THIS PROTOCOL AS

09:39:20 16   PIM YOURSELF?

09:39:20 17   A.   I BELIEVE THAT'S CORRECT. AND GENERALLY THAT MEANS YOU

09:39:23 18   ARE REFERRING TO BOTH TYPES OF PIM.

09:39:26 19   Q.   NOW, MSDP, THAT APPEARS IN 19 OF THE COMMANDS?

09:39:30 20   A.   THE MULTITASK SOURCE DISCOVERY PROTOCOL.

09:39:34 21   Q.   THAT'S ANOTHER IT EF, INDUSTRY STANDARD PROTOCOL?

09:39:40 22   A.   YES, THAT IS.

09:39:41 23   Q.   THAT'S AT 6910 IN YOUR BINDER, IF YOU WOULD TAKE A LOOK AT

09:39:45 24   THAT, PLEASE.

09:39:54 25   A.   YES.

09:39:54 1   Q.   ALL RIGHT.

09:39:55 2   MR. VAN NEST: I WOULD MOVE 6910 IN EVIDENCE,

09:39:57 3   YOUR HONOR.

09:39:58 4   MR. NELSON: I'M ALMOST THERE, YOUR HONOR.

09:40:00 5   MR. VAN NEST: OH, EXCUSE ME. I'M SORRY.

09:40:02 6   MR. NELSON: NO, THAT'S OKAY.

09:40:03 7   THAT'S FINE, YOUR HONOR.

09:40:04 8   THE COURT: IT WILL BE ADMITTED.

09:40:07 9   (DEFENDANT'S EXHIBIT 6910 WAS ADMITTED INTO EVIDENCE.)

09:40:07 10   BY MR. VAN NEST:

09:40:08 11   Q.   IF WE COULD DISPLAY THIS ONE. ON THIS PROTOCOL, THE

09:40:11 12   INITIALS WE ARE TALKING ABOUT HERE, MSDP, THEY APPEAR RIGHT IN

09:40:16 13   THE TITLE OF THE PROTOCOL; CORRECT?

09:40:17 14   A.   THEY DO.

09:40:19 15   Q.   AND THAT WAS THE ACRONYM THAT ENGINEERS AT CISCO CHOSE TO

09:40:21 16   USE IN THE COMMANDS AS WELL?

09:40:22 17   A.   THAT WAS WHAT THEY CHOSE, THAT'S CORRECT.

09:40:25 18   Q.   AND PROBABLY THERE ARE SOME TERMS IN THIS PROTOCOL THAT

09:40:28 19   DISCUSS MSDP THAT WERE ALSO CHOSEN TO BE INCLUDED; RIGHT?

09:40:34 20   A.   VERY LIKELY. I MEAN, THIS DOCUMENT IS COMPOSED OF

09:40:37 21   HUNDREDS, IF NOT THOUSANDS, OF WORDS, AND THE IDEA THAT THERE

09:40:42 22   ARE SOME ENGLISH WORDS THAT MIGHT ALSO APPEAR IN WHAT THE

09:40:48 23   INVENTOR OF THE COMMAND LINE INTERFACE COMMAND CHOSE, CERTAINLY

09:40:53 24   THAT MIGHT BE THE CASE.

09:40:55 25   Q.   AND LIKELY, THE CHOICE WAS MADE BECAUSE THE TERMS ARE

09:40:59 1   FAMILIAR TO PEOPLE WHO ARE USING THE MSDP STANDARD, RIGHT,

09:41:04 2   DR. ALMEROTH?

09:41:05 3   A.   THAT MIGHT BE ONE OF THE CONSIDERATIONS. BUT, AGAIN,

09:41:08 4   THERE ARE OTHER CONSIDERATIONS. I TALKED ABOUT THE

09:41:12 5   PARSER-POLICE MANIFESTO. THERE WERE A VARIETY OF

09:41:17 6   CONSIDERATIONS THAT WENT INTO THE CREATIVE PROCESS THAT THE

09:41:19 7   ENGINEERS AT CISCO USED.

09:41:20 8   Q.   ISIS, IS-IS, IS THAT AN INDUSTRY STANDARD PROTOCOL?

09:41:31 9   A.   YES.

09:41:32 10   Q.   AND THERE ARE ROUGHLY 1EN COMMANDS AT ISSUE THAT USE THAT

09:41:37 11   PHRASE; CORRECT?

09:41:38 12   A.   YES.

09:41:38 13   Q.   THAT'S TX 6824. WOULD YOU TAKE A MOMENT TO LOOK AT THAT

09:41:43 14   ONE. DO YOU RECOGNIZE IT, DR. ALMEROTH?

09:42:01 15   A.   I DO.

09:42:03 16   MR. VAN NEST: I MOVE 6824 INTO EVIDENCE, YOUR HONOR.

09:42:06 17   MR. NELSON: NO OBJECTION, YOUR HONOR.

09:42:08 18   THE COURT: DID WILL BE ADMITTED.

09:42:10 19   (DEFENDANT'S EXHIBIT 6824 WAS ADMITTED INTO EVIDENCE.)

09:42:10 20   BY MR. VAN NEST:

09:42:10 21   Q.   AND AGAIN HERE, USE OF IS-IS FOR ROUTING IN TCP/IP AND

09:42:22 22   DUAL ENVIRONMENTS, THAT APPEARS RIGHT IN THE TITLE OF THE

09:42:25 23   PROTOCOL. CORRECT?

09:42:26 24   A.   IT DOES. IT'S A LITTLE BIT UNFORTUNATE. BUT USUALLY THE

09:42:29 25   WAY WE PRONOUNCE IT IS ISIS.

09:42:31   1   Q.   OKAY. SO THAT PHRASE FROM THE PROTOCOL WAS ONE THAT

09:42:36   2   WHOEVER DESIGNED THE COMMANDS AT CISCO DECIDED WOULD BE

09:42:40   3   APPROPRIATE FOR A COMMAND INVOLVING THIS PROTOCOL; RIGHT?

09:42:44   4   A.   WE WOULD HAVE TO LOOK AT THOSE COMMANDS. I'M NOT SURE IF

09:42:50   5   THE SYNTAX IS EXACTLY THE SAME AS WHAT'S DESCRIBED HERE.

09:42:52   6   Q.   WHETHER OR NOT THE SYNTAX IS THE SAME, CERTAINLY THIS

09:42:56   7   TITLE, THIS PHRASE ISIS, THAT WAS USED BY CISCO ENGINEERS TO

09:43:01   8   REFER TO THIS PROTOCOL; RIGHT?

09:43:03   9   A.   WELL, THE SYNTAX IS ALL IMPORTANT. THAT'S PART OF THE

09:43:06   10   CREATIVE PROCESS IS DETERMINING WHETHER THE HYPHEN IS THERE,

09:43:12   11   WHAT THE CAPITALIZATION SHOULD BE. I MEAN, THAT'S THE

09:43:15   12   DIFFERENCE BETWEEN WHAT THE ENGINEERS UNDERSTAND AND CAN CONVEY

09:43:19   13   THE MEANING OF THE COMMAND, BUT IS SOMETHING THAT CAN STILL BE

09:43:22   14   UNDERSTOOD BY THE PARSER.

09:43:24   15   Q.   NOW, DR. ALMEROTH, THERE ARE MANY OTHER INDUSTRY STANDARDS

09:43:28   16   THAT PROVIDE TERMS IN THE COMMANDS AT ISSUE IN THE LAWSUIT;

09:43:33   17   CORRECT?

09:43:34   18   A.   COULD YOU REPEAT THE QUESTION?

09:43:36   19   Q.   YES. THERE ARE MANY OTHER INDUSTRY STANDARDS THAT PROVIDE

09:43:42   20   TERMS FOR COMMANDS AT ISSUE IN THE LAWSUIT?

09:43:43   21   A.   GENERALLY, THAT'S TRUE. I WANT TO BE VERY CAREFUL IN

09:43:47   22   ANSWERING THAT QUESTION. YOU'VE USED THE TERM INDUSTRY

09:43:50   23   STANDARD. AND BY THAT I UNDERSTAND THAT THERE ARE RFC'S FROM

09:43:55   24   THE IETF, AND STANDARDS FROM THE IEEE THAT DEFINE PROTOCOLS,

09:44:00   25   AND SOME OF THOSE PROTOCOLS INCLUDE ASPECTS THAT ARE

09:44:04 1   INCORPORATED INTO COMMANDS.

09:44:05 2   Q.   OKAY. SO, FOR EXAMPLE, VRRP, THAT'S ANOTHER INDUSTRY

09:44:09 3   STANDARD; CORRECT?

09:44:10 4   A.   IT IS.

09:44:11 5   Q.   THAT STANDS FOR VIRTUAL ROUTER REDUNDANCY PROTOCOL; RIGHT?

09:44:16 6   A.   YES.

09:44:16 7   Q.   YOU ARE FAMILIAR WITH THAT?

09:44:17 8   A.   YES.

09:44:18 9   Q.   THAT'S AN INDUSTRY STANDARD?

09:44:19 10   A.   I BELIEVE IT IS, BUT I WOULD HAVE TO GO BACK AND DOUBLE

09:44:24 11   CHECK THE DOCUMENT.

09:44:25 12   Q.   ALL RIGHT. WELL, LET'S DO IT. 6881, AND I PROMISE NOT TO

09:44:29 13   DO MANY MORE OF THESE, 6881 IN YOUR BINDER?

09:44:51 14   A.   OKAY. I FOUND IT.

09:44:52 15   Q.   ALL RIGHT. IS THAT THE VRRP PROTOCOL?

09:44:55 16   A.   IT IS.

09:44:55 17   Q.   AND IT WAS A RATIFIED PROTOCOL?

09:44:58 18   A.   YES, IT'S A STANDARDS TRACK RFQ DOCUMENT.

09:45:03 19   MR. VAN NEST: YOUR HONOR, I WOULD OFFER 6881 IN

09:45:06 20   EVIDENCE.

09:45:06 21   MR. NELSON: NO OBJECTION, YOUR HONOR.

09:45:07 22   THE COURT: IT WILL BE ADMITTED.

09:45:09 23   (DEFENDANT'S EXHIBIT 6881 WAS ADMITTED INTO EVIDENCE.)

09:45:09 24   BY MR. VAN NEST:

09:45:12 25   Q.   NOW, DR. ALMEROTH, YOU WERE PROVIDED WITH A REPORT THAT

09:45:19 1   DR. BLACK DID ANALYZING ALL 506 COMMANDS THAT ARE AT ISSUE IN

09:45:26 2   THE CASE; CORRECT?

09:45:27 3   A.   YES.

09:45:31 4   Q.   AND HE PROVIDED YOU WITH A COLOR-CODED CHART WHICH HE

09:45:37 5   CLAIMS SHOW THAT ANY TERM IN GREEN ON THE CHART CAME FROM AN

09:45:41 6   INDUSTRY STANDARD PROTOCOL; RIGHT?

09:45:43 7   A.   I BELIEVE THAT'S CORRECT.

09:45:46 8   Q.   AND I SHOWED ONE SMALL SAMPLE OF THAT IN THE OPENING.

09:45:49 9   IF I COULD HAVE THAT OPENING STATEMENT SLIDE UP, PLEASE.

09:45:52 10   THIS IS A DEMONSTRATIVE.   THERE IT IS.   ALL RIGHT.

09:45:55 11   YOU WERE HERE FOR THE OPENING STATEMENT?

09:45:56 12   A.   YES, SIR.

09:45:57 13   Q.   AND I SHOWED THIS TO THE JURY?

09:46:00 14   A.   YES, SIR.

09:46:00 15   Q.   AND DR. BLACK PROVIDED YOU WITH THIS AND MANY MORE CHARTS

09:46:06 16   IN THE COURSE OF THE PREPARATORY WORK IN THIS CASE; RIGHT?

09:46:10 17   A.   THAT'S CORRECT, AS PART OF HIS REBUTTAL TO MY REPORT.

09:46:13 18   Q.   RIGHT.   AND ACCORDING TO DR. BLACK, EVERY TERM ON HERE IN

09:46:19 19   GREEN, HE HAS TRACED BACK TO AN INDUSTRY STANDARD PROTOCOL?

09:46:24 20   THAT'S WHAT HE SAID; RIGHT?

09:46:25 21   A.   I BELIEVE THAT'S CORRECT.   YOU WILL HAVE TO REPRESENT THAT

09:46:29 22   THAT'S WHAT HE SAID.

09:46:30 23   Q.   AND THEN YOU HAD AN OPPORTUNITY TO PUT IN A REBUTTAL

09:46:33 24   REPORT TO THIS; RIGHT?

09:46:35 25   A.   YES.

09:46:35   1   Q.   AND YOU WROTE A 9200 PAGE REBUTTAL REPORT?

09:46:44   2   A.   A 90 TO 100 PAGE REBUTTAL REPORT, YES. I WASN'T SURE WHAT

09:46:47   3   YOU SAID.

09:46:48   4   Q.   A 90 TO 100 PAGE REBUTTAL REPORT, THAT'S WHAT I MEANT TO

09:46:52   5   SAY.

09:46:52   6   A.   I THOUGHT YOU SAID A 900 PAGE.

09:46:55   7   Q.   NO, NO.

09:46:57   8   A.   ALL RIGHT. I'M SORRY.

09:46:58   9   Q.   THANK YOU. ALTHOUGH YOU DISAGREED WITH DR. BLACK'S

09:47:02   10   METHODOLOGY, AND YOU DISAGREE WITH HIS CONCLUSION, YOU DIDN'T

09:47:06   11   DISAGREE WITH ANY OF HIS DATA; RIGHT?

09:47:10   12   A.   I'M NOT SURE THAT'S TRUE. ESPECIALLY CONSIDERING THE

09:47:14   13   DATA -- WELL, I WOULD HAVE TO GO BACK AND LOOK AT THE REPORT.

09:47:18   14   WE CAN MATCH UP THE TWO. I THINK WE HAD A FAIR NUMBER OF

09:47:22   15   DISAGREEMENTS.

09:47:22   16   Q.   YOU SAID IN YOUR REPORT THAT THIS DOESN'T MATTER BECAUSE

09:47:26   17   WE ARE MAKING NO CLAIM FOR INDIVIDUAL TERMS, BUT YOU CERTAINLY

09:47:30   18   NEVER DISPUTED ANY ONE OF THE INDIVIDUAL TERMS AND ITS GENESIS

09:47:38   19   IN A PROTOCOL; RIGHT?

09:47:40   20   A.   I THINK YOU ARE CORRECT. I THINK I DISAGREED WITH HIS

09:47:45   21   METHODOLOGY AND WHAT HE USED THIS INFORMATION FOR. I THINK THE

09:47:48   22   FACT THAT YOU CAN TAKE A MULTI-HUNDRED PAGE RFC OR STANDARD AND

09:47:54   23   YOU CAN TAKE HUNDREDS OF THOSE AND YOU CAN FIND PARTICULAR

09:47:57   24   WORDS IN THEM, DOES NOT SUGGEST OR ALLOW SOMEBODY TO CONCLUDE

09:48:02   25   THAT THERE WASN'T CREATIVITY IN THE PROCESS OF DETERMINING THE

09:48:07 1   CHOICE OF WORDS AND THE ORDER OF THOSE WORDS IN THE COMMANDS.

09:48:10 2   Q.   RIGHT. BUT YOU DIDN'T PROVIDE ANY DATA, FOR EXAMPLE, TO

09:48:13 3   SAY ANY PARTICULAR TERM IN HIS COLOR-CODED CHART WAS WRONG;

09:48:19 4   RIGHT?

09:48:19 5   A.   THAT'S RIGHT. I DIDN'T LOOK TO SEE THAT THE WORD HE

09:48:24 6   IDENTIFIED DIDN'T APPEAR IN SOME RFC AT SOME POINT ANYWHERE.

09:48:29 7   THERE'S NEARLY 8,000 RFC'S THAT COME FROM THE ITEF AT THIS

09:48:34 8   POINT.

09:48:34 9   Q.   AND IT'S NOT SURPRISING THAT MANY OF THE TERMS IN THESE

09:48:37 10   COMMANDS COME FROM PROTOCOLS BECAUSE THAT'S EXACTLY THE

09:48:42 11   GUIDANCE THAT CISCO GIVES TO ITS ENGINEERS; RIGHT?

09:48:48 12   A.   THAT'S ONE ASPECT, AND I THINK IF YOU LOOK AT THE

09:48:51 13   MANIFESTO, THERE'S A WHOLE SERIES OF RECOMMENDATIONS THAT THEY

09:48:55 14   MAKE THAT COULD INFORM AN ENGINEER ON HOW THEY CHOOSE WHAT THE

09:49:02 15   COMMANDS SHOULD BE.

09:49:02 16   Q.   IN FACT, THE GUIDELINES SAY IF THERE'S AN INDUSTRY

09:49:08 17   STANDARD TERM THAT'S ACCEPTED, USE THAT; RIGHT?

09:49:10 18   A.   YOU MIGHT BE PARAPHRASING.

09:49:12 19   Q.   WELL LET'S FIND OUT. LET'S GO TO TX 851.

09:49:16 20   IT'S IN EVIDENCE, YOUR HONOR.

09:49:17 21   THE COURT: YES.

09:49:19 22   MR. VAN NEST: AND I THINK THE JURORS HAVE SEEN IT.

09:49:22 23   Q.   BY THE WAY, YOU REFERENCED THIS IN YOUR TESTIMONY

09:49:24 24   YESTERDAY, DR. ALMEROTH. YOU ARE VERY FAMILIAR WITH THE

09:49:28 25   PARSER-POLICE MANIFESTO, OR WHATEVER IT'S CALLED AT CISCO?

09:49:32 1   A.   YES, SIR.

09:49:33 2   Q.   AND THAT PROVIDES GUIDELINES TO THE ENGINEERS ON HOW TO

09:49:35 3   WRITE COMMANDS?

09:49:36 4   A.   IT DOES. AND IF YOU GIVE ME A SECOND TO FIND IT.

09:49:42 5   Q.   OKAY. I'M SORRY -- WELL, I'VE GOT IT ON THE SCREEN, AND I

09:49:46 6   HAVE IT IN THE BINDER AS WELL. IT'S TX 851. ALL RIGHT. NOW,

09:50:16 7   THIS IS THE STATEMENT DOCUMENT THAT YOU TALKED ABOUT YESTERDAY

09:50:19 8   IN YOUR TESTIMONY. YOU HAD IT ON SOME SLIDES?

09:50:24 9   A.   I THINK WE TALKED ABOUT THE DOCUMENT ITSELF. IT MIGHT

09:50:26 10   ALSO HAVE BEEN ON SOME SLIDES.

09:50:28 11   Q.   OKAY. FAIR ENOUGH.

09:50:29 12   IF WE COULD GO TO PARAGRAPH 6, MR. DAHM, AND BLOW THAT UP.

09:50:37 13   THERE WE GO.

09:50:39 14   THERE'S A LIST OF GUIDELINES; RIGHT?

09:50:43 15   A.   THAT'S RIGHT. AND I BELIEVE THERE'S TEN ON THE LIST.

09:50:45 16   Q.   OKAY. AND ONE OF THEM IS, "WHEN NAMING A COMMAND, TRY TO

09:50:50 17   PICK NAMES THAT WOULD BE FAMILIAR TO PEOPLE IN THE INDUSTRY;"

09:50:53 18   RIGHT?

09:50:53 19   A.   YES.

09:50:54 20   Q.   OKAY. AND, FOR EXAMPLE, "IP MTU 576" IS BETTER THAN THE

09:51:04 21   LONGER VERSION, SINCE MTU IS AN ACCEPTED INDUSTRY ACRONYM.

09:51:10 22   THAT'S WHAT IT SAYS; RIGHT?

09:51:11 23   A.   YES.

09:51:12 24   Q.   AND ACCEPTED INDUSTRY ACRONYM, THAT'S WHAT WE HAVE BEEN

09:51:15 25   TALKING ABOUT THIS MORNING WITH THE PHRASES LIKE OSPF AND BGP

09:51:21 1   AND MSDP FROM THE PROTOCOLS, THAT'S WHAT THEY ARE TALKING

09:51:26 2   ABOUT?

09:51:26 3   A.   NO.   IT'S MORE THAN THAT; RIGHT?   AND THIS IS A REALLY

09:51:29 4   GOOD EXAMPLE.   BUT THE REASON WHY MTU IS AN ACCEPTED INDUSTRY

09:51:33 5   ACRONYM IS BECAUSE THE IP PROTOCOL HAS BEEN AROUND FOR NEARLY

09:51:38 6   30 YEARS.   AND IN THAT TIME, MTU HAS BECOME A VERY COMMON

09:51:43 7   ACRONYM.

09:51:43 8   BUT WHAT THIS IS SAYING IS YOU HAVE TO USE SOME JUDGMENT

09:51:47 9   AND SOME CREATIVITY TO DETERMINE WHETHER OR NOT THINGS THAT ARE

09:51:51 10   SETTLED WITHIN THE INDUSTRY, AS TO WHETHER OR NOT AN ENGINEER

09:51:56 11   SHOULD CHOOSE BETWEEN SOMETHING THAT'S LONGER AND MORE

09:51:59 12   EXPRESSIVE, AND SHORTER AND LESS EXPRESSIVE, BUT SOMETHING THAT

09:52:06 13   SOMEONE IN THE INDUSTRY WOULD PROBABLY UNDERSTAND.

09:52:08 14   Q.   BUT I THOUGHT YOU TOLD ME JUST A MINUTE AGO THAT TERMS

09:52:12 15   LIKE MSDP AND BGP AND OSPF, THEY ARE ALL FAMILIAR TO NETWORKING

09:52:17 16   ENGINEERS; RIGHT?

09:52:18 17   A.   MANY OF THOSE ARE.

09:52:19 18   Q.   OKAY.

09:52:20 19   A.   AND THERE ARE SOME NEWER PROTOCOLS THAT AREN'T, AND THAT'S

09:52:23 20   WHAT I THINK THE SECOND UNHIGHLIGHTED SENTENCE REFERS TO, THAT

09:52:27 21   WHERE THE INDUSTRY IS NOT SETTLED ON A UNIVERSAL PARLANCE, THE

09:52:31 22   LONGEST FORMAL NAME IS PROBABLY BETTER.   THAT TENDS TO HAPPEN

09:52:35 23   MORE WITH NEWER PROTOCOLS OR WITH FEATURES OF PROTOCOLS THAT

09:52:39 24   ARE LESS WIDELY UNDERSTOOD AND ACCEPTED.

09:52:40 25   Q.   BUT, DR. ALMEROTH, YOU UNDERSTAND, WE HAVE BEEN TALKING

09:52:43 1   ABOUT PROTOCOLS THIS MORNING THAT WERE DEVELOPED IN THE 80'S

09:52:47 2   AND EARLY 90'S, THEY ARE NOT NEWER?

09:52:49 3   A.   I DISAGREE, SOME OF THOSE PROTOCOLS WENT INTO THE LATE

09:52:53 4   90'S AS WELL.

09:52:53 5   Q.   OKAY. BUT CERTAINLY THEY ALL FIT THE DEFINITION OF THIS

09:52:57 6   PARTICULAR PARAGRAPH, WHICH IS AN ACCEPTED INDUSTRY ACRONYM;

09:53:05 7   RIGHT?

09:53:05 8   A.   I THINK THE TOP LEVEL PROTOCOL NAMES, THINGS LIKE BGP, IP,

09:53:11 9   MTU, OSPF, IGMP, ARE CERTAINLY THINGS THAT PEOPLE IN THE

09:53:18 10   INDUSTRY WOULD UNDERSTAND, BUT I DON'T THINK IT'S THE CASE

09:53:22 11   THAT, FOR EXAMPLE, WHAT WAS IT -- WITHIN IGMP, THE PARTICULAR

09:53:28 12   INTERFACE COUNTER WAS SOMETHING THAT YOU COULD HAVE JUST

09:53:31 13   ABBREVIATED AS IC, BECAUSE THAT'S A DETAIL OF THE PROTOCOL THAT

09:53:38 14   MOST PEOPLE PROBABLY DON'T UNDERSTAND.

09:53:40 15   Q.   NOW --

09:53:42 16   A.   AND AGAIN, THIS ALL GOES INTO THE PROCESS OF WHAT THAT

09:53:46 17   ENGINEER HAS TO DETERMINE, HAS TO INTUIT AND USE THEIR

09:53:50 18   EXPERIENCE AS PART OF THAT CREATIVE PROCESS.

09:53:53 19   Q.   LET'S GO TO PARAGRAPH 10, PLEASE. THE GUIDELINES ALSO

09:53:58 20   TELL US THAT "COMMANDS SHOULD TEND TO BE SELF-EXPLANATORY SO

09:54:04 21   THAT A RELATIVELY KNOWLEDGEABLE USER CAN FIGURE OUT THE COMMAND

09:54:07 22   FUNCTION FROM THE COMMAND AND ONLINE HELP WITHOUT HAVING TO

09:54:12 23   SCURRY OFF TO THE MANUALS;" RIGHT?

09:54:15 24   A.   THAT'S WHAT THAT LINE SAYS. AND IT IS IMPORTANT TO KEEP

09:54:18 25   READING, IT SAYS, "WHAT CONSTITUTES 'SELF-EXPLANATORY.'"

ALMEROTH CROSS BY MR. VAN NEST (RES.)

09:54:23 1   Q.   LET'S START WITH WHAT I ASKED YOU TO LOOK AT,

09:54:26 2   DR. ALMEROTH, FIRST. YOU CAN GO ON TO YOUR PARAGRAPH IN A

09:54:28 3   MOMENT, BUT MY QUESTION IS, WOULDN'T PHRASES LIKE BGP AND OSPF

09:54:35 4   AND MSDC, WOULDN'T THEY BE SELF-EXPLANATORY TO NETWORK

09:54:40 5   ENGINEERS AFTER ALL THESE YEARS?

09:54:43 6   A.   FIRST OF ALL, I THINK YOU CUT ME OFF, AND IT'S IMPORTANT

09:54:45 7   TO CONSIDER THIS WHOLE GUIDELINE IN CONTEXT. AS FOR --

09:54:50 8   Q.   DR. ALMEROTH, I'M HAPPY TO DO THAT, BUT I WOULD LIKE AN

09:54:53 9   ANSWER TO MY QUESTION FIRST, PLEASE?

09:54:54 10   A.   I'M ANSWERING YOUR QUESTION, SIR.

09:54:56 11   Q.   NO. MY QUESTION IS, WOULDN'T THE PHRASES THAT WE WENT

09:55:00 12   THROUGH THIS MORNING LIKE OSPF, AND MSDC, AND BGP, WOULDN'T

09:55:09 13   THOSE ALL BE SELF-EXPLANATORY TO NETWORKING ENGINEERS AS

09:55:14 14   REQUIRED -- OR SUGGESTED BY PARAGRAPH 10?

09:55:17 15   A.   NO, BECAUSE YOU WENT THROUGH A LOT OF OTHER COMMANDS, AND

09:55:20 16   SOME OF THOSE ARE NOT SELF-EXPLANATORY. I GAVE YOU SOME

09:55:23 17   EXAMPLES ALREADY. WE CAN GO THROUGH THE SET AGAIN, AND I CAN

09:55:26 18   POINT THOSE OUT TO YOU.

09:55:27 19   Q.   CERTAINLY, THOUGH THE CONCEPT EXPRESSED HERE IS IF THERE

09:55:32 20   IS A PHRASE THAT IS FAMILIAR AND IS SELF-EXPLANATORY, USE THAT

09:55:38 21   FIRST; RIGHT? THAT'S THE IDEA.

09:55:42 22   A.   THAT'S THE IDEA OF WHAT YOU'VE HIGHLIGHTED, BUT IT'S NOT

09:55:46 23   REALLY REPRESENTATIVE OF WHAT THE WHOLE IDEA IS.

09:55:50 24   Q.   LET'S GO TO PARAGRAPH 7. THE GUIDELINES ALSO TELL US,

09:55:55 25   DON'T USE CODE NAMES IN COMMANDS; RIGHT?

09:56:00 1   A.   THAT'S THE FIRST SENTENCE.

09:56:02 2   Q.   AND ISN'T THE GIST OF THAT PARAGRAPH, DON'T USE WORDS THAT

09:56:06 3   ARE UNIQUE CODE TO CISCO, USE WORDS THAT EVERYBODY KNOWS?

09:56:10 4   A.   NO, THAT'S NOT WHAT THAT SAYS. I MEAN, IT SAYS DON'T USE

09:56:14 5   CODE NAMES IN COMMANDS. DEBUG WHIZZY-ASIC IS ONE EXAMPLE, WILL

09:56:25 6   NOT BE VERY USEFUL TO CUSTOMERS. THAT'S NOT VERY USE SPECIFIC

09:56:30 7   TO CISCO.

09:56:30 8   IF YOU NEED THEM AND YOU SWEAR THAT CUSTOMERS WILL NOT USE

09:56:34 9   THEM, MAKE THEM HIDDEN, PROVIDED THAT YOU MAKE SURE THE DEBUG

09:56:40 10   COMMANDS DO NOT COLLIDE WITH COMMON DEBUG DEMANDS.

09:56:44 11   ESSENTIALLY, IT'S SAYING TO TRY AND NOT USE CODE WORDS,

09:56:46 12   SOMETHING THAT A LIMITED SET OR AUDIENCE WOULD UNDERSTAND, BUT

09:56:49 13   IT SAYS THAT IF YOU NEED TO, THEN YOU HAVE THAT FREEDOM.

09:56:52 14   Q.   NOW, YOU SAID IN YOUR REPORT THAT PEOPLE COULD USE WORDS

09:56:56 15   LIKE STEVE OR BOOK OR PHONE INSTEAD OF SHOW, AND THAT WOULD BE

09:57:02 16   AS A TECHNICAL MATTER JUST FINE; RIGHT?

09:57:04 17   A.   I'M NOT SURE I SAID THAT AS A TECHNICAL MATTER. I THINK

09:57:07 18   THAT WHAT I WAS DESCRIBING IN THE REPORT IS THAT IT'S CERTAINLY

09:57:11 19   POSSIBLE YOU COULD USE ANY WORDS WHATSOEVER FOR COMMANDS.

09:57:15 20   AND IN SOME CASES, FOR EXAMPLE, THERE'S A UNIX COMMAND

09:57:19 21   CALLED GREP FOR SEARCH. SO SOMETIMES THE WAY THAT WORDS ARE

09:57:23 22   USED IS NOT TYPICALLY HOW THEY ARE USED. AND THERE IS NO

09:57:29 23   PROHIBITION ANYWHERE THAT SAYS YOU COULDN'T USE GREP, OR STEVE,

09:57:32 24   OR BOB AS PART OF A COMMAND.

09:57:35 25   IT MIGHT NOT FOLLOW THE GUIDELINES. YOU MIGHT GET

09:57:39 1   FEEDBACK FROM THE PARSER-POLICE MAILING LIST THAT SAYS, THIS

09:57:42 2   DOESN'T MAKE SENSE, YOU SHOULD TRY AND CHOOSE SOMETHING ELSE,

09:57:47 3   BUT AS THE PARSER-POLICE MANIFESTO SAYS, THOSE ARE REALLY JUST

09:57:50 4   GUIDELINES.

09:57:50 5   AND IF THE PERSON WHO CREATED THAT COMMAND CAN PREVAIL

09:57:54 6   WITH THAT DECISION, THAT COULD ACTUALLY BE A COMMAND. THERE'S

09:57:57 7   NOTHING THAT PROHIBITS THAT FROM BEING A POSSIBILITY.

09:58:00 8   Q.   YOU ACTUALLY SAID IN YOUR REPORT THAT INSTEAD OF USING

09:58:04 9   WORDS LIKE DISPLAY OR PRINT, YOU COULD USE WORDS SUCH AS STEVE

09:58:08 10 OR BOOK OR PHONE, AND THEY WOULD BE USED JUST AS WELL, ISN'T

09:58:12 11 THAT WHAT YOU SAID?

09:58:13 12 A.   YEAH, IT'S JUST AS WELL FROM THE PERSPECTIVE OF DESIGNING

09:58:15 13 THE COMMAND. IT MIGHT NOT MEET THE CRITERIA THAT ARE LISTED IN

09:58:19 14 THE MANIFESTO.

09:58:25 15   BUT THIS IS THE IMPORTANT POINT, THERE'S NOTHING THAT

09:58:27 16 PROHIBITS THOSE WORDS OR REALLY ANY WORDS, FROM BEING USED IN

09:58:30 17 THE COMMANDS.

09:58:31 18 Q.   BUT OBVIOUSLY IF IT YOU ARE TRYING TO DESCRIBE SOMETHING

09:58:34 19 THAT PERTAINS TO AN INDUSTRY STANDARD LIKE OSPF, IT DOESN'T

09:58:41 20 MAKE A LOT OF SENSE TO USE STEVE OR PHONE, DOES IT?

09:58:45 21 A.   NO, IT DOESN'T MAKE A LOT OF SENSE. JUST LIKE YOU ARE

09:58:47 22 WRITING A BOOK OR POEM, WRITING WORDS THAT DON'T MEAN WHAT THEY

09:58:50 23 ARE SUPPOSED TO MEAN DOESN'T MAKE A LOT OF SENSE, BUT IT

09:58:53 24 DOESN'T MEAN THOSE PROCESSES AREN'T CREATIVE.

09:58:56 25 Q.   AND AS A MATTER OF FACT, YOU DON'T HAVE ANY PERSONAL

09:58:59 1   KNOWLEDGE OF WHAT ANYONE AT CISCO WAS THINKING, OTHER THAN WHAT

09:59:02 2   YOU'VE HEARD IN COURT, WHEN THEY WROTE ANY PARTICULAR COMMAND,

09:59:05 3   DO YOU?

09:59:05 4   A.   THAT'S CORRECT. I LOOKED VERY MUCH AT THE PROCESS IN THE

09:59:08 5   DOCUMENTS AVAILABLE DESCRIBING THAT PROCESS.

09:59:09 6   Q.   SO RESPECT TO ANY ALTERNATIVES, INCLUDING ALL THE

09:59:11 7   ALTERNATIVES YOU TALKED ABOUT YESTERDAY, YOU HAVE NO IDEA WHAT,

09:59:15 8   IF ANY, ALTERNATIVES WERE CONSIDERED BY ANY CISCO ENGINEER IN

09:59:18 9   CONNECTION WITH THEIR WORK OTHER THAN WHAT YOU HEARD IN COURT?

09:59:22 10   A.   THAT'S CORRECT. BUT THAT WASN'T NECESSARY TO FORM MY

09:59:25 11   OPINION AS TO WHETHER OR NOT THIS WAS CREATIVITY.

09:59:28 12   Q.   ALL RIGHT. LET'S MOVE ON TO ANOTHER TOPIC, MODES AND

09:59:34 13   PROMPTS.

09:59:34 14   MR. VAN NEST: COULD I HAVE DR. ALMEROTH'S SLIDE 16

09:59:37 15   UP.

09:59:38 16   Q.   THIS WAS ONE OF THE SLIDES THAT YOU TALKED ABOUT

09:59:41 17   YESTERDAY, DR. ALMEROTH, AND I JUST WANTED TO COME BACK AND

09:59:44 18   CLARIFY A COUPLE OF THINGS.

09:59:47 19   FIRST OF ALL, YOU ARE NOT MAKING ANY CLAIMS, CISCO IS NOT

09:59:51 20   MAKING ANY CLAIM FOR THE -- BASED ON ANY INDIVIDUAL MODE OR

09:59:59 21   PROMPT?

09:59:59 22   A.   THAT'S CORRECT.

10:00:00 23   Q.   AND YOU KNOW THAT WHEN DR. LOUGHEED WAS HERE,

10:00:03 24   MR. LOUGHEED, HE MENTIONED THAT USER EXEC AND PRIVILEGED EXEC,

10:00:08 25   THEY WERE ALREADY IN USE IN THE TOP 20 DEVICES HE USED AT

10:00:13 1   STANFORD?

10:00:13 2   A.   AS THE MODES, THAT'S CORRECT.

10:00:15 3   Q.   SO HE TESTIFIED THAT HE HAD A GLOBAL CONFIGURATION, AN

10:00:19 4   INTERFACE CONFIGURATION, AND IT'S THAT ARRANGEMENT OF ALL FOUR

10:00:23 5   THAT FORMS THE CLAIM THAT YOU ARE MAKING IN THIS CASE?

10:00:25 6   A.   THAT'S CORRECT.

10:00:26 7   Q.   RIGHT.

10:00:27 8   A.   IN THE CORRESPONDING PROMPTS, THAT'S RIGHT.

10:00:30 9   Q.   AND, IN FACT, THESE ARE FOUR MODES BUT THERE ARE MORE THAN

10:00:34 10   A HUNDRED MODES IN CISCO'S IOS SOFTWARE; RIGHT?

10:00:39 11   A.   THAT'S CORRECT. I BELIEVE THAT'S CORRECT.

10:00:40 12   Q.   THERE ARE MORE THAN 100 MODES, SO 96 OTHER MODES BEYOND

10:00:46 13   THESE THAT ARE AVAILABLE IN IOS?

10:00:50 14   A.   THAT'S CORRECT. CERTAINLY CISCO HAS A WIDE RANGE OF

10:00:54 15   PRODUCTS, I MEAN HUNDREDS IF NOT THOUSANDS OF PRODUCTS. THEY

10:00:58 16   COVER A VARIETY OF DIFFERENT FUNCTIONALITY. BUT THESE ARE

10:01:01 17   REALLY THE FOUR CORE MODES. I BELIEVE THAT EVERY DEVICE HAS

10:01:06 18   THESE FOUR MODES.

10:01:07 19   Q.   AND AS A MATTER OF FACT YOU KNOW, AS SOMEONE IN THE

10:01:12 20   INDUSTRY, THAT THESE FOUR MODES ARE SUPPORTED BY VIRTUALLY

10:01:15 21   EVERY OTHER MAJOR VENDOR; RIGHT?

10:01:19 22   A.   NO, I WOULD DISAGREE. I DON'T THINK VIRTUALLY EVERY OTHER

10:01:23 23   VENDOR.

10:01:23 24   Q.   WELL, LET'S PUT UP SLIDE 9.

10:01:31 25   AGAIN, YOU GOT SOME MATERIAL FROM DR. BLACK. HE ACTUALLY

10:01:37 1   WENT OUT AND LOOKED AT WHAT OTHER VENDORS ARE USING; CORRECT?

10:01:42 2   A.   WELL, HE DID FOR SOME VENDORS. IT WAS ACTUALLY A FAIRLY

10:01:47 3   SMALL SET.

10:01:48 4   Q.   SOME 20, I BELIEVE, OR 25?

10:01:50 5   A.   I BELIEVE THAT'S CORRECT, ESPECIALLY IN THE SPACE THAT

10:01:55 6   THERE'S HUNDREDS IF NOT THOUSANDS.

10:01:57 7   Q.   HOW MANY MAJOR VENDORS ARE THERE, DR. ALMEROTH?

10:02:00 8   A.   IT DEPENDS ON WHAT YOU CALL MAJOR. YOUR CONCEPT OF MAJOR

10:02:03 9   MIGHT BE DIFFERENT THAN MINE, MIGHT BE DIFFERENT THAN

10:02:07 10   DR. BLACK'S. AND I DON'T THINK DR. BLACK SAID WHAT HE THOUGHT

10:02:12 11   WAS A MAJOR --

10:02:12 12   Q.   BUT ONE THINS IS FOR SURE --

10:02:12 13   A.   BUT I'M NOT FINISHED.

10:02:13 14   HE DID IT BASED ON DOLLARS OR VOLUME OR REPRESENTATION,

10:02:18 15   IT'S COMPLETELY ARBITRARY WHAT YOU SECT SELECT.

10:02:22 16   Q.   BUT ONE THING IS FOR SURE, YOU DIDN'T LOOK AT ANY?

10:02:25 17   A.   THAT'S NOT TRUE.

10:02:26 18   Q.   SO LET'S TAKE A LOOK AT SLIDE 9. HIS REPORT PROVIDED

10:02:31 19   INFORMATION ABOUT THE MODES SUPPORTED BY OTHER VENDORS IN THE

10:02:37 20   INDUSTRY, CORRECT?

10:02:38 21   MR. NELSON: OBJECT, YOUR HONOR.

10:02:42 22   I THINK WE NEED TO ESTABLISH WHAT TIMEFRAME WE ARE TALKING

10:02:44 23   ABOUT HERE.

10:02:45 24   THE COURT: WELL, LET'S GET A TIMEFRAME.

10:02:47 25   MR. VAN NEST: WELL, I BELIEVE THE TIMEFRAME FROM

10:02:49 1   DR. BLACK'S REPORT IS --

10:03:02 2   THE COURT: THE OBJECTION IS OVERRULED.

10:03:04 3   MR. NELSON: BUT THAT'S AFTER THE CONFIGURATION OF

10:03:06 4   THE MODES AND PROMPTS, YOUR HONOR. THIS GOES TO THE FAIR USE

10:03:08 5   DEFENSE NOT THE --

10:03:09 6   THE COURT: I DON'T EVEN WHAT IT'S -- YOU KNOW, WE

10:03:11 7   ARE NOT --

10:03:11 8   MR. VAN NEST: IT GOES -- IT GOES. LET ME DEVELOP

10:03:14 9   THIS A LITTLE BIT MORE.

10:03:15 10   THE COURT: GO AHEAD. I WILL LET YOU.

10:03:17 11   BY MR. VAN NEST:

10:03:18 12   Q.   HE PROVIDED YOU WITH CHARTS SHOWING THAT THE FOUR MODES

10:03:22 13   AND THE ARRANGEMENT OF THOSE ARE USED BY NOT ONLY CISCO AND

10:03:28 14   ARISTA, BUT FOUNDRY, BROCADE, DELL, EXTREME, HP, JUNIPER,

10:03:38 15   JUNOS, AND BLADE AND PROBABLY ANOTHER FIVE OR TEN; RIGHT?

10:03:44 16   A.   I DON'T REMEMBER. AND I'M VERY HESITANT TO AGREE WITH

10:03:48 17   YOUR CHARACTERIZATIONS OF WHAT HE DESCRIBED IN HIS REPORT. I

10:03:51 18   DON'T HAVE HIS REPORT, SO I --

10:03:55 19   Q.   BUT YOU HAD AN OPPORTUNITY, AGAIN, TO REBUT THIS REPORT AS

10:03:58 20   WELL?

10:03:59 21   A.   YES.

10:03:59 22   Q.   RIGHT? THIS IS JUST LIKE THE COLOR-CODED CHART. YOU HAD

10:04:04 23   THIS REPORT AND A FULL OPPORTUNITY TO REBUT IT; CORRECT?

10:04:09 24   A.   I DID HAVE AN OPPORTUNITY TO REBUT HIS REPORT.

10:04:11 25   Q.   AND INSTEAD OF GOING OUT AND DETERMINING WHETHER HE WAS

10:04:15 1   RIGHT OR WRONG ABOUT THE FACT THAT THE MAJOR VENDORS ARE ALL

10:04:20 2   USING THESE MODES, YOU SIMPLY SAID, I DON'T AGREE WITH THE

10:04:25 3   APPROACH; RIGHT?

10:04:27 4   A.   FOR AT LEAST THE REASONS I'VE GIVEN SO FAR. YOU'VE SAID

10:04:30 5   MAJOR VENDORS. I QUESTIONED HIS METHODOLOGY, I INCLUDED THAT

10:04:34 6   ALL IN THE REBUTTAL REPORT. I WOULD ACTUALLY EXPECT TO TESTIFY

10:04:38 7   ABOUT THAT AFTER I HEAR HIM PRESENT HIS EVIDENCE ABOUT THIS

10:04:42 8   CHART.

10:04:43 9   Q.   OKAY. WE WILL COME BACK TO THAT WHEN YOU DO.

10:04:49 10   YOU GAVE TESTIMONY YESTERDAY ABOUT SOME USER MANUALS?

10:04:52 11   A.   YES, SIR.

10:04:53 12   Q.   TECHNICAL DOCUMENTATION, I THINK YOU CALLED IT, BUT

10:04:58 13   ESSENTIALLY THEY ARE USER MANUALS?

10:04:59 14   A.   YOU CAN CHOOSE JUST ABOUT ANY WORD, I DON'T REALLY WANT TO

10:05:03 15   QUIBBLE WITH YOU.

10:05:04 16   Q.   IN ANY EVENT, WHAT THEY ARE, THEY'RE NOT THE COMMANDS, BUT

10:05:07 17   THEY ARE A REFERENCE GUIDE THAT DESCRIBES THE COMMANDS; RIGHT?

10:05:10 18   A.   I'M NOT SURE I UNDERSTAND THE QUESTION. THEY ARE THE

10:05:13 19   COMMANDS, I MEAN, THEY ARE THE DESCRIPTION OF THE COMMANDS.

10:05:16 20   Q.   OKAY. AND THEY -- THEY HAVE TEXT DESCRIPTIONS OF WHAT THE

10:05:20 21   COMMANDS DO; RIGHT?

10:05:22 22   A.   YES.

10:05:22 23   Q.   THEY TEND TO BE VERY LARGE DOCUMENTS WHEN YOU PRINT THEM

10:05:26 24   OUT LARGE?

10:05:27 25   A.   YES.

10:05:28 1   Q.   SOMETIMES HUNDREDS OF PAGES, SOMETIMES THOUSANDS OF PAGES?

10:05:31 2   A.   YES.

10:05:31 3   Q.   AND --

10:05:35 4   MR. VAN NEST: COULD I HAVE TX -- I THINK IT'S 4789.

10:05:38 5   YOU PREPARED A SUMMARY OF WHAT YOU FOUND OR BELIEVED WAS

10:05:44 6   SUBSTANTIALLY SIMILAR -- 4795 I BELIEVE IS THE SUMMARY.

10:05:50 7   Q.   DO YOU HAVE THAT FROM YOUR DOCUMENTS YESTERDAY? LET'S PUT

10:05:55 8   THE COVER UP.

10:06:00 9   A.   WOULD YOU GIVE ME THE NUMBER ONE MORE TIME.

10:06:03 10 Q.   IT'S 4795. IT'S THE DOCUMENT THAT YOU PRESENTED YESTERDAY

10:06:07 11 AS A SUMMARY OF WHAT YOU FOUND HAD BEEN -- WHAT YOU WERE

10:06:12 12 CONTENDING HAD BEEN COPIED BY ARISTA FROM THE MANUALS?

10:06:17 13 A.   YES, THAT'S CORRECT.

10:06:18 14 Q.   SO I HAVE THE COVER PAGE UP. I JUST WANT TO CLARIFY, I

10:06:23 15 TAKE IT THE FORMAT OF THIS IS THE CISCO MANUALS ARE ON THE LEFT

10:06:29 16 AND THE CORRESPONDING ARISTA MANUALS ARE ON THE RIGHT?

10:06:33 17 A.   THAT'S CORRECT.

10:06:34 18 Q.   RIGHT. AND YOU ARE SAYING WHAT'S ON THE RIGHT, YOU THINK,

10:06:37 19 AFTER YOUR REVIEW, WAS COPIED FROM WHAT'S ON THE LEFT?

10:06:40 20 A.   THAT'S CORRECT.

10:06:42 21 Q.   AND THIS DOCUMENT CONTAINS ALL THE INSTANCES OF COPYING

10:06:48 22 THAT YOU'VE IDENTIFIED AND PRESENTED; RIGHT? THESE AREN'T JUST

10:06:55 23 EXAMPLES, THIS IS WHAT YOU CLAIM CONSTITUTES THE COPYING BY

10:06:58 24 ARISTA?

10:06:59 25 A.   IT'S THE ONES THAT ARE IN THIS SUMMARY. I'M NOT SURE IT'S

10:07:02 1   ACCURATE TO SAY IT'S ALL THE ONES THAT I FOUND. IT'S CERTAINLY

10:07:06 2   ALL THE ONES THAT I'M CLAIMING.

10:07:08 3   Q.   OKAY. IT'S ALL THE ONES YOU ARE CLAIMING. AND, IN FACT,

10:07:11 4   THESE ARE FROM A WHOLE BUNCH OF DIFFERENT MANUALS; RIGHT?

10:07:16 5   A.   THEY ARE FROM DIFFERENT MANUALS. SOME ARE FROM DIFFERENT

10:07:21 6   MANUALS.

10:07:22 7   Q.   SO LET'S LOOK AT THE VERY FIRST ONE AND BLOW UP BOTH

10:07:28 8   SIDES. AND NOW LET ME BACK UP A MINUTE. YOU GAVE SOME

10:07:30 9   TESTIMONY YESTERDAY THAT YOU WERE A PLAGIARISM EXPERT?

10:07:34 10   A.   YES.

10:07:35 11   Q.   YEAH? AND YOU'VE DEVELOPED A SOFTWARE TOOL THAT CAN LOOK

10:07:40 12   THROUGH TWO DIFFERENT SETS OF MATERIALS AND DETERMINE WHAT WAS

10:07:44 13   COPIED?

10:07:45 14   A.   NO, THAT'S NOT EXACTLY WHAT IT DOES. I'M SURE YOU WERE

10:07:50 15   HERE IN AND LISTENING TO MY INTRO.

10:07:52 16   Q.   I SURE WAS.

10:07:53 17   A.   WHEN I DESCRIBED THAT TOOL, IT WAS TO TAKE SNIPPETS FROM A

10:07:56 18   DOCUMENT, PLUG IT INTO GOOGLE AND SEE WHAT CAME BACK, AND THAT

10:08:00 19   WAS REALLY TO ADDRESS THE ISSUE OF STUDENTS WHO WERE COPYING

10:08:04 20   THINGS FROM WIKIPEDIA AND THINGS THAT THEY FOUND BY SEARCHING

10:08:08 21   THE NETWORK.

10:08:08 22   Q.   OKAY. AND DON'T YOU HAVE A NAME FOR THAT SOFTWARE CALLED

10:08:12 23   PAIRWISE?

10:08:13 24   A.   YES.

10:08:13 25   Q.   DID YOU TRADEMARK THAT?

10:08:17 1   A.   I DON'T RECALL.

10:08:18 2   Q.   WHO KNOWS.

10:08:21 3   DID YOU USE IT IN THIS CASE?

10:08:22 4   A.   NO.

10:08:23 5   Q.   NO. SO YOU DIDN'T?

10:08:25 6   A.   IT WOULD NOT HAVE BEEN APPROPRIATE FOR THE ANALYSIS IN

10:08:27 7   THIS CASE.

10:08:27 8   Q.   IN FACT, THE EXAMPLES THAT WE ARE LOOKING AT HERE, THEY

10:08:30 9   WERE PROVIDED TO YOU BY CISCO'S LAWYERS; RIGHT?

10:08:33 10   A.   THE EXAMPLES WERE AND THEN I WENT THROUGH THE DOCUMENTS

10:08:36 11   AND CONFIRMED THAT THEY EXISTED AS THEY WERE REPRESENTED.

10:08:39 12   Q.   SO EVEN THOUGH -- EVEN THOUGH YOU'RE THE PLAGIARISM

10:08:44 13   EXPERT, YOU'RE NOT THE ONE THAT WENT THROUGH AND DETERMINED

10:08:47 14   WHICH EXAMPLES SHOULD BE CLAIMED AS COPIED; RIGHT?

10:08:50 15   A.   THAT'S CORRECT. NOT THE ONES THAT WERE CLAIMED. BUT I

10:08:53 16   DID GO THROUGH AND DO THE ANALYSIS OF WHICH ONES WERE

10:08:56 17   IDENTIFIED TO CONFIRM THAT I THOUGHT THEY WERE INSTANCES OF

10:08:59 18   COPYING.

10:09:00 19   Q.   SO YOU GOT A LIST FROM THE LAWYERS, AND YOU WORKED WITH

10:09:03 20   THAT?

10:09:05 21   A.   AS A STARTING POINT, THAT'S CORRECT.

10:09:07 22   Q.   OKAY. AND YOU DIDN'T DO ANY INDEPENDENT WORK BEFORE THAT

10:09:13 23   TO COME UP WITH A LIST? THE LAWYERS PUT THE LIST TOGETHER;

10:09:16 24   RIGHT?

10:09:16 25   A.   NO, NOT BEFORE. BUT CERTAINLY AFTER I HAD THE LIST, I DID

10:09:20	1	MY ANALYSIS AND DID MY INDEPENDENT INVESTIGATION.
10:09:23	2	Q. NOW, THIS REFERENCE WE'VE GOT HERE IS THE ONLY INSTANCE IN
10:09:31	3	WHICH YOU CAN -- WHICH YOU ARE CLAIMING COPYING IN THE MANUAL
10:09:35	4	THAT'S MORE THAN A HUNDRED PAGES LONG; RIGHT?
10:09:38	5	A. I DON'T REMEMBER HOW LONG IT WAS EXACTLY, BUT I WILL TAKE
10:09:42	6	YOUR REPRESENTATION.
10:09:44	7	Q. I WILL REPRESENT TO YOU THIS MANUAL IS MORE THAN 170 PAGES
10:09:49	8	LONG.
10:09:49	9	A. OKAY.
10:09:50	10	Q. AND IN THAT 170 PAGE MANUAL, THE LAWYERS AND YOU CAME UP
10:09:55	11	WITH THIS ONE EXAMPLE OF WHAT THEY SAY AND YOU SAY WAS COPIED;
10:09:58	12	RIGHT?
10:09:58	13	A. THAT WAS THE ONE EXAMPLE THAT'S AT ISSUE.
10:10:01	14	Q. AND IF -- IF THE QUESTION IS WHETHER THERE'S BEEN A
10:10:07	15	SIGNIFICANT OR A MATERIAL AMOUNT OF COPYING OUT OF THIS
10:10:12	16	170-PAGE MANUAL, YOUR ANSWER IS, YEAH, BECAUSE THESE TWO LINES
10:10:16	17	WERE COPIED; RIGHT?
10:10:18	18	A. NO, I DON'T THINK IT'S THAT. I THINK YOU HAVE TO LOOK AT
10:10:22	19	ALL OF THE COPYING. I THINK YOU HAVE TO -- AND YOU SAID
10:10:27	20	WHETHER IT'S SIGNIFICANT.
10:10:28	21	AND WHEN YOU LOOK AT THE TESTIMONY, FOR EXAMPLE, MR. DUDA
10:10:31	22	USED THE WORD "SLAVISH COPYING." WHEN YOU LOOK AT THE FACT
10:10:34	23	THAT ARISTA ADMITTED TO AND APOLOGIZED AND FIRED THE PERSON WHO
10:10:40	24	COPIED THE USER MANUALS, THOSE ARE THE THINGS THAT GO INTO MY
10:10:43	25	CONSIDERATION OF WHETHER IT'S SIGNIFICANT.

10:10:45 1   Q.   I SEE. WELL, LET'S JUST LOOK AT THIS ONE. BECAUSE YOU

10:10:47 2   ARE TELLING OUR JURORS THAT THE ONE ON THE BOTTOM IS A COPY OF

10:10:51 3   THE ONE ON THE TOP; RIGHT?

10:10:54 4   A.   OR THAT THAT'S SUBSTANTIALLY SIMILAR, NEARLY IDENTICAL OR

10:10:57 5   SUBSTANTIALLY SIMILAR.

10:10:58 6   Q.   OKAY. NOW, LET ME ALSO GET SOMETHING STRAIGHT. THE ONLY

10:11:02 7   PARTS OF IT YOU EVEN CLAIM WERE COPIED, YOU'VE GOT IN THE

10:11:05 8   LITTLE RED BOXES; RIGHT?

10:11:06 9   A.   THAT'S CORRECT.

10:11:06 10   Q.   SO IF SOMEONE WERE ACTUALLY GOING TO COMPARE THE COMMANDS

10:11:09 11   AS THEY APPEAR, THEY WOULD BE LOOKING AT THE ENTIRETY OF WHAT'S

10:11:14 12   ON THE TOP AND THE ENTIRETY OF WHAT'S ON THE BOTTOM, NOT JUST

10:11:17 13   WHAT'S IN THE RED BOX; RIGHT?

10:11:19 14   A.   COULD YOU REPEAT THAT.

10:11:21 15   Q.   LET'S MOVE ON. WE WILL COME BACK TO THAT.

10:11:26 16   SO THE TOP, AS I READ IT SAYS, "TO DISPLAY A BRIEF OR

10:11:29 17   DETAILED STATUS OF ONE OR ALL CONFIGURED VIRTUAL ROUTER

10:11:37 18   REDUNDANCY PROTOCOL (VRRP) GROUPS ON THE COUNTER, USE TO SHOW

10:11:44 19   VRRP COMMAND IN PRIVILEGED EXEC MODE."

10:11:48 20   THAT'S WHAT IT SAYS; RIGHT?

10:11:50 21   A.   IT DOES.

10:11:51 22   Q.   AND THE BOTTOM ONE SAYS -- BY THE WAY, DOES THE BOTTOM ONE

10:11:57 23   EVEN PERTAIN TO THE SAME COMMAND?

10:12:00 24   A.   IT'S VRRP, YES.

10:12:02 25   Q.   SAYS, "USE THE FOLLOWING COMMANDS TO DISPLAY THE VRRP

10:12:08   1   CONFIGURATION AND STATUS." AND THEN IT GOES DOWN FURTHER AND

10:12:14   2   SAYS, "SHOW VRRP, DISPLAYS THE STATUS OF CONFIGURED VRRP GROUPS

10:12:21   3   ON SPECIFIED INTERVALS."

10:12:25   4   YOUR CLAIM IS THOSE ARE SO SUBSTANTIALLY SIMILAR, THEY

10:12:28   5   MUST HAVE BEEN COPIED; RIGHT?

10:12:30   6   A.   YES.

10:12:30   7   Q.   LET'S GO DOWN TO ANOTHER EXAMPLE AT PAGE 8, DO WE HAVE A

10:12:40   8   MAP OF PAGE 8?

10:12:43   9   ALL RIGHT. NOW, WE ARE IN A DIFFERENT MANUAL; RIGHT?

10:12:49 10   THIS IS A DIFFERENT MANUAL THAN THE ONE WE LOOKED AT

10:12:52 11   A.   YES.

10:12:53 12   Q.   AND HERE, THIS MANUAL, I WILL REPRESENT TO YOU, IS ALMOST

10:12:58 13   1200 PAGES LONG, 1200 PAGES LONG.

10:13:02 14   A.   OKAY.

10:13:03 15   Q.   ALL RIGHT. DO WE HAVE AN EXAMPLE OF THAT HERE? DO WE

10:13:06 16   HAVE THE MANUAL PRINTED OUT? WE PROBABLY DON'T?

10:13:06 17   (OFF-THE-RECORD DISCUSSION.)

10:13:12 18   BY MR. VAN NEST:

10:13:12 19   Q.   OKAY. SO OUT OF THE 1200 PAGES OF THE MANUAL, WHAT YOU

10:13:16 20   ARE PRESENTING, WHAT YOU PRESENTED TO THE JURY AS THE ONLY

10:13:19 21   THING COPIED IN THAT 1200 PAGES, ARE THESE TWO EXAMPLES; RIGHT?

10:13:26 22   A.   NO.

10:13:32 23   Q.   I DON'T FIND ANY OTHER EXAMPLES FROM THIS PARTICULAR

10:13:37 24   MANUAL, DR. ALMEROTH, IN YOUR LIST. DO YOU?

10:13:39 25   A.   WELL, THE ONES THAT YOU HAVE ON THE SCREEN ARE NOT THE TWO

10:13:45   1   EXAMPLES THAT APPEAR ON PAGE 8.

10:13:49   2   Q.   OKAY.

10:13:51   3   A.   SO IF YOU GO BACK TO PAGE 8 --

10:13:53   4   Q.   WELL, MAYBE WE HAVE A SLIGHTLY DIFFERENT VERSION OF

10:13:57   5   THIS --

10:13:57   6   A.   NO, YOU WERE ORIGINALLY FOCUSED ON THE TOP ROW.

10:14:00   7   Q.   YEAH.

10:14:01   8   A.   AND THERE'S AT LEFT THE TOP -- THERE'S THE TWO ROWS ON

10:14:04   9   THIS PAGE THAT ARE BOTH FROM THAT MANUAL.

10:14:06   10   Q.   OKAY. FAIR ENOUGH.

10:14:07   11   A.   YEAH.

10:14:07   12   Q.   I'M SORRY. BUT WE ARE LOOKING -- I'M RIGHT, IF I GET IT

10:14:11   13   RIGHT, THAT'S WHAT'S ON THIS PAGE IS THE ENTIRETY OF WHAT YOU

10:14:14   14   SAY WAS COPIED FROM THAT PARTICULAR 1200 PAGE MANUAL; RIGHT?

10:14:18   15   A.   AND I HAVEN'T CONFIRMED THAT THIS SAME INFORMATION ISN'T

10:14:22   16   IN OTHER MANUALS FOR EXAMPLE, THAT WAS THE ONE EXAMPLE.

10:14:25   17   Q.   OKAY. BUT LET'S TAKE A LOOK HERE. IF I TAKE THE RED

10:14:33   18   LINES OFF ON THE LEFT AND RIGHT, THOSE TWO DESCRIPTIONS ARE

10:14:36   19   VERY DIFFERENT.

10:14:37   20   THE ONE ON THE LEFT CONTAINS A LOT MORE TEXT THAN THE ONE

10:14:40   21   ON THE RIGHT, YOU CAN TELL THAT JUST ON THE FACE OF IT; RIGHT?

10:14:43   22   A.   NO, I DON'T KNOW THAT THAT'S NECESSARILY TRUE -- IT HAS --

10:14:51   23   IF YOU LOOK AT WHAT'S INCLUDED IN THIS PARTICULAR CELL VERSUS

10:14:55   24   WHAT'S HIGHLIGHTED.

10:14:57   25   Q.   THAT'S NOT MY QUESTION. I ASKED YOU TO TELL ME IF YOU

10:15:00   1   TOOK THE CELLS OFF, ISN'T THERE A LOT MORE TEXT ON THE LEFT

10:15:04   2   THAN THERE IS ON THE VERSION ON THE RIGHT? THAT'S MY QUESTION.

10:15:08   3   A.   YOU SAID TAKE THE RED BOXES OFF.

10:15:10   4   Q.   YES.

10:15:11   5   A.   AND MY POINT REALLY IS IF YOU LOOK IN THE MANUALS AS TO

10:15:14   6   WHAT THERE IS TEXT RELATED TO THESE COMMANDS, THERE'S A SIMILAR

10:15:17   7   AMOUNT OF TEXT.

10:15:18   8   THE REASON WHY IN THE RIGHT BOX THERE'S LESS TEXT IS

10:15:22   9   BECAUSE OF THE LIST BELOW THAT SHOWS THE INSTANCES OF THIS

10:15:26 10   INFORMATION APPEARING IN EACH OF THE ARISTA MANUALS.

10:15:28 11   Q.   BUT IN ANY EVENT, YOUR CONTENTION, AND THE JURORS WILL BE

10:15:32 12   ABLE TO EVALUATE IT, IS THAT THE RIGHT-HAND SIDE OF THE TOP BOX

10:15:35 13   WAS COPIED FROM THE LEFT BECAUSE THEY ARE SO SIMILAR?

10:15:39 14   A.   YES.

10:15:39 15   Q.   RIGHT? AND THAT'S TRUE FOR THE BOTTOM TOO?

10:15:42 16   A.   YES.

10:15:43 17   Q.   YOUR CLAIM IS THE RIGHT-HAND SIDE IS COPIED FROM THE

10:15:46 18   LEFT-HAND SIDE BECAUSE THEY ARE SO SIMILAR; RIGHT?

10:15:49 19   A.   YES.

10:15:49 20   Q.   THEY ARE CERTAINLY, NOT VIRTUALLY IDENTICAL, THOUGH;

10:15:52 21   RIGHT?

10:15:52 22   A.   IN TERMS OF THE INFORMATION, I BELIEVE THEY ARE.

10:15:55 23   Q.   NOW, EVEN IF YOU ARE RIGHT, THIS IS THE ENTIRETY OF WHAT

10:15:59 24   YOU SAY WAS COPIED FROM THE 1200-PAGE MANUAL; CORRECT?

10:16:03 25   A.   I WOULD HAVE TO GO BACK AND DOUBLE CHECK. THAT CERTAINLY

10:16:06 1   MIGHT BE THE CASE. I HAVEN'T LISTED ALL THE DIFFERENT CISCO

10:16:09 2   MANUALS WHERE THAT APPEARS.

10:16:11 3   Q.   NOW, YOU TESTIFIED YESTERDAY ABOUT HELP DESCRIPTIONS. THE

10:16:22 4   HELP DESCRIPTIONS ARE TEXT THAT APPEARS WHEN THE USER TYPES A

10:16:24 5   QUESTION MARK AFTER A WORD, I BELIEVE YOU SAID; IS THAT

10:16:28 6   CORRECT?

10:16:28 7   A.   YES. I THINK YOU CAN, AT THE PROMPT, EVEN JUST TYPE A

10:16:32 8   QUESTION MARK WITH NO WORD.

10:16:33 9   Q.   AND YOU CAN DO IT -- YOU CAN PUT THE QUESTION MARK AFTER

10:16:37 10   ANY WORD IN THE COMMAND; RIGHT?

10:16:39 11   A.   YES.

10:16:39 12   Q.   SO YOU WERE TESTIFYING YESTERDAY ABOUT HELP DESCRIPTIONS

10:16:44 13   IN IOS XR, VERSION 5.14; RIGHT?

10:16:49 14   A.   THAT WAS PART OF IT. I TESTIFIED ABOUT OTHER VERSIONS AS

10:16:53 15   WELL.

10:16:53 16   Q.   AND THERE ARE THOUSANDS AND THOUSANDS OF HELP DESCRIPTIONS

10:16:59 17   IN -- EVEN THE ONE VERSION THAT YOU DID TALK ABOUT?

10:17:02 18   A.   I BELIEVE THERE ARE MANY, AT LEAST A THOUSAND, PROBABLY

10:17:08 19   MULTIPLE THOUSAND. I DON'T HAVE AN EXACT COUNT.

10:17:10 20   Q.   WELL, DR. BLACK LOOKED AT IOS XR AND HE FOUND MORE THAN

10:17:18 21   50,000 HELP DESCRIPTIONS IN JUST THAT VERSION. DOES THAT SOUND

10:17:22 22   RIGHT TO YOU?

10:17:23 23   A.   IT DOESN'T. I WOULD HAVE TO GO BACK AND LOOK AT HIS

10:17:29 24   REPORT.

10:17:29 25   Q.   BUT YOU DON'T HAVE A TOTAL NUMBER; IS THAT RIGHT?

10:17:31 1   A.   AS I SIT HERE NOW, I DON'T REMEMBER WHAT IT WAS. IT MIGHT

10:17:35 2   HAVE BEEN IN THE REBUTTAL REPORT. AGAIN, DR. BLACK WILL GET UP

10:17:39 3   AND TESTIFY, I HAVE A REBUTTAL REPORT, AND I WILL HAVE OPINIONS

10:17:42 4   WITH RESPECT TO WHAT HE TESTIFIES ABOUT.

10:17:44 5   Q.   AND THE TOTAL NUMBER OF HELP DESCRIPTIONS THAT YOU'RE

10:17:47 6   ASSERTING IS 216; IS THAT RIGHT?

10:17:50 7   A.   THAT'S CORRECT.

10:17:51 8   Q.   AND THEY INCLUDE SOME PRETTY SIMPLE DESCRIPTIONS OF

10:17:53 9   COMMANDS, DON'T THEY?

10:17:55 10   A.   SIMPLE, ELEGANT, YES.

10:17:58 11   Q.   LET'S LOOK AT SIMPLE AND ELEGANT. SLIDE 6, PLEASE.

10:18:03 12   THE ONES THAT YOU ARE ASSERTING HAD -- AMONG WHAT YOU ARE

10:18:09 13   ASSERTING ARE DELETE A FILE; RIGHT?

10:18:10 14   A.   YES.

10:18:11 15   Q.   ELEGANT?

10:18:11 16   A.   YES.

10:18:12 17   Q.   RENAME A FILE. CREATIVE; RIGHT?

10:18:15 18   A.   YES.

10:18:16 19   Q.   YEAH. CHANGE CURRENT DIRECTLY. ORIGINAL; RIGHT?

10:18:20 20   A.   YES.

10:18:21 21   Q.   COPY ONE FILE TO ANOTHER. PROTECTABLE, ACCORDING TO YOU?

10:18:29 22   A.   THAT MIGHT BE AN ULTIMATE LEGAL CONCLUSION.

10:18:32 23   Q.   DIRECTORY OF FILE NAME. YOU SAY THAT'S CREATIVE AND

10:18:36 24   ORIGINAL; RIGHT?

10:18:38 25   A.   YES.

10:18:39 1   Q.   FILE TO BE DELETED, ANOTHER CREATIVE ORIGINAL ONE

10:18:43 2   ACCORDING TO YOU; RIGHT?

10:18:44 3   A.   YES, YOU'VE CERTAINLY SELECTED OUT OF THE 216 THE ONES

10:18:48 4   THAT ARE MORE STRAIGHTFORWARD.

10:18:51 5   Q.   TIME IN MINUTES. THERE'S ANOTHER ONE; RIGHT?

10:18:55 6   A.   YES.

10:18:55 7   Q.   NOW, YOU ALSO TALKED YESTERDAY ABOUT COMMAND RESPONSES.

10:19:10 8   THOSE ARE THE TEXT RESPONSES THAT COME UP WHEN YOU ENTER A SHOW

10:19:17 9   COMMAND; CORRECT?

10:19:18 10   A.   YES.

10:19:21 11   Q.   AND, AGAIN, YOU GAVE US A TRIAL EXHIBIT TX 4800, AND IF

10:19:28 12   YOU COULD PULL THAT OUT, DR. ALMEROTH, I WOULD APPRECIATE IT?

10:19:31 13   MR. VAN NEST: I WILL PUT UP THE COVER SHEET. IT'S

10:19:35 14   IN EVIDENCE, YOUR HONOR.

10:19:36 15   Q.   AGAIN, JUST AS WITH THE DOCUMENTS, THESE ARE ALL OF THE

10:19:49 16   COMMAND OUTPUTS THAT YOU ARE CLAIMING IN THIS LAWSUIT; RIGHT?

10:19:53 17   A.   THAT'S CORRECT.

10:19:53 18   Q.   AND I COUNTED 37 OF THEM. DOES THAT SOUND RIGHT?

10:20:00 19   A.   I THINK THAT'S ABOUT RIGHT.

10:20:01 20   Q.   OKAY. AND THERE ARE, AGAIN, TENS OF THOUSANDS OF COMMAND

10:20:09 21   OUTPUTS IN IOS ALONE; RIGHT?

10:20:15 22   A.   I WAS GOING TO SAY THAT SEEMS HIGH, BUT WHEN YOU TALK

10:20:20 23   ABOUT ALL OF IOS, I MEAN, AS I TESTIFIED TO EARLIER, THERE ARE

10:20:24 24   HUNDREDS, IF NOT A THOUSAND DIFFERENT CISCO PRODUCTS THAT RUN

10:20:30 25   IOS. IT'S A VERY LARGE OPERATING SYSTEM. SO THERE VERY WELL

10:20:36 1   MIGHT BE --

10:20:39 2   Q.   TENS OF THOUSANDS OF HELP -- EXCUSE ME -- OF COMMAND

10:20:43 3   OUTPUTS?   THAT'S WHAT I SAID.

10:20:45 4   A.   RIGHT.   THERE MIGHT BE.   I DON'T HAVE THAT NUMBER

10:20:48 5   MEMORIZED.

10:20:48 6   Q.   BUT WHATEVER NUMBER THERE ARE, THE TOTAL NUMBER OF COMMAND

10:20:52 7   OUTPUTS THAT YOU ARE COMPLAINING ABOUT IS 37; RIGHT?

10:20:57 8   A.   THOSE ARE THE ONES THAT WERE THE FOCUS OF THE SUMMARY

10:21:00 9   EXHIBIT.

10:21:00 10   Q.   OKAY.   AND THEN -- WELL, NOT ONLY THAT, NOT ONLY THE FOCUS

10:21:04 11   OF THIS EXHIBIT, THEY ARE THE TOTAL.   THERE AREN'T ANY MORE

10:21:09 12   THAT YOU ARE CLAIMING IN THIS LAWSUIT; RIGHT?

10:21:11 13   A.   OH, NOT THAT ARE BEING CLAIMED IN THE LAWSUIT, BUT I WOULD

10:21:14 14   DISAGREE THAT THAT'S ALL THAT THERE ARE.

10:21:17 15   Q.   OKAY.   NOW, AGAIN, IT'S THE SAME DRILL.   YOU'VE TAKEN THE

10:21:20 16   LEFT-HAND SIDE AS CISCO AND THE RIGHT-HAND SIDE IS ARISTA, AND

10:21:24 17   YOU'VE DRAWN THE RED BOXES AROUND; RIGHT?

10:21:26 18   A.   YES.

10:21:27 19   Q.   AND THE RED BOXES ARE INTENDED TO SHOW WHAT'S THE SAME;

10:21:33 20   RIGHT?

10:21:33 21   A.   THAT'S CORRECT, EXCEPT FOR, FOR EXAMPLE, THE NUMBERS THAT

10:21:37 22   MIGHT ACTUALLY VARY --

10:21:40 23   Q.   SURE?

10:21:41 24   A.   -- BECAUSE OF PACKET ACCOUNTS OR SOMETHING LIKE THAT.

10:21:43 25   Q.   OKAY.   LET'S GO DOWN TO PAGE 7.   AND LET'S HIGHLIGHT THE

10:21:52 1   BOTTOM. THIS IS ONE OF THE ONES YOU ARE CLAIMING. AND ON THE

10:21:57 2   LEFT, THE COMMAND WE ARE TALKING ABOUT IS SHOW IP ROUTE; RIGHT?

10:22:04 3   A.   YES.

10:22:04 4   Q.   AND ON THE RIGHT, THE COMMAND YOU ARE TALKING ABOUT IS

10:22:09 5   SHOW IP ROUTE BGP. THAT'S A DIFFERENT COMMAND, ISN'T IT?

10:22:13 6   A.   IT IS.

10:22:13 7   Q.   ALL RIGHT. SO THIS ONE ISN'T EVEN COMPARING THE SAME

10:22:18 8   COMMAND ON BOTH SIDES OF THE PAGE, IS IT?

10:22:20 9   A.   BUT IT'S THE SIMILARITY IN THE STRUCTURE AND OF THE

10:22:24 10   OUTPUT.

10:22:25 11   Q.   NOW, JUST SO THE JURORS UNDERSTAND, WHAT YOU ARE SAYING IS

10:22:30 12   THIS THING ON THE RIGHT IS SO SIMILAR TO WHAT'S ON THE LEFT,

10:22:33 13   THAT IT WAS PROBABLY COPIED; RIGHT?

10:22:38 14   A.   YES.

10:22:38 15   Q.   OKAY. AND LET'S JUST TAKE THE TOP LINE ON THE LEFT THAT

10:22:44 16   TALKS ABOUT CONNECTED, STATIC, IGRP, RIP, MOBILE, BGP

10:22:56 17   ET CETERA. THAT'S WHAT ON THE FIRST LINE OF THE LEFT; RIGHT?

10:22:59 18   A.   YES.

10:23:00 19   Q.   AND ON THE RIGHT YOU'VE GOT CONNECTED STATIC AND KERNEL

10:23:04 20   AND THAT'S IT. DID I GET THAT RIGHT?

10:23:07 21   A.   ON THE TOP LINE. ON THE LEFT THERE'S CERTAINLY MORE

10:23:10 22   INFORMATION BECAUSE OF THE ADDITIONAL OPTIONS OF IOS, BUT IF

10:23:12 23   YOU LOOK AT MOST OF THE CODES THAT ARE REPRESENTED ON THE

10:23:14 24   RIGHT, THEY CAN BE FOUND IN THE LIST THAT'S ON THE LEFT.

10:23:17 25   Q.   OKAY. SO -- BUT JUST SO WE'RE CLEAR, IT'S YOUR CONTENTION

10:23:22	1	THAT THOSE ARE SO SIMILAR THAT THEY MUST HAVE BEEN COPIED;
10:23:25	2	RIGHT?
10:23:25	3	A. YES.
10:23:26	4	Q. LET'S GO TO PAGE 9. STATIC. AND BLOW UP THE TOP. SAME
10:23:34	5	THING HERE. YOU'VE GOT OUTPUT ON THE LEFT, OUTPUT ON THE
10:23:39	6	RIGHT, AND WHAT YOU'RE CLAIMING IS THAT WHAT'S IN THE BOXES IS
10:23:44	7	IT'S COPIED; RIGHT?
10:23:47	8	A. IN THIS EXAMPLE, YES.
10:23:49	9	Q. SO IF I TAKE THE BOXES AWAY, I TAKE THE RED LINES AWAY,
10:23:55	10	THOSE TWO LOOK A LOT LESS SIMILAR, DON'T THEY?
10:23:59	11	A. YES. I MEAN --
10:24:05	12	Q. THEY DO? THEY DO?
10:24:11	13	MR. VAN NEST: DR. ALMEROTH, I HAVE NO FURTHER
10:24:13	14	QUESTIONS. I PASS THE WITNESS, YOUR HONOR.
10:24:15	15	THE COURT: THANK YOU. MR. NELSON, I THINK WE WILL
10:24:16	16	TAKE OUR BREAK BEFORE YOU BEGIN YOUR REDIRECT. I THINK THAT
10:24:19	17	WILL BE A LITTLE EASIER.
10:24:20	18	OKAY. LET'S TAKE OUR MORNING BREAK. WE WILL COME BACK IN
10:24:24	19	15 MINUTES.
10:24:26	20	(RECESS FROM 10:24 A.M. UNTIL 10:40 A.M.)
10:40:48	21	THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.
10:40:50	22	PLEASE BE SEATED, EVERYONE. ALL OF OUR JURORS ARE HERE.
10:40:55	23	MR. NELSON, YOU WOULD LIKE TO HAVE REDIRECT FOR THIS
10:40:57	24	WITNESS?
10:40:57	25	MR. NELSON: YES, YOUR HONOR.

10:40:58 1   THE COURT: GO AHEAD, PLEASE.

10:40:59 2   MR. NELSON: MAY I PROCEED, YOUR HONOR?

10:41:02 3   THE COURT: YES.

10:41:02 4   MR. NELSON: THANK YOU.

10:41:03 5   **REDIRECT EXAMINATION**

10:41:04 6   BY MR. NELSON:

10:41:04 7   Q.   GOOD MORNING, DR. ALMEROTH. HOW ARE YOU DOING.

10:41:06 8   A.   GREAT.

10:41:06 9   Q.   ALL RIGHT. THANK YOU, SIR. SO I JUST HAVE A FEW

10:41:13 10   QUESTIONS TO FOLLOW UP WITH YOU. SO I WANT TO GO BACK TO

10:41:16 11   RESEARCH GRANTS THAT YOU WERE GETTING.

10:41:18 12   A.   YES.

10:41:18 13   Q.   FIRST, CAN YOU EXPLAIN TO US WHAT THESE RESEARCH GRANTS

10:41:21 14   ARE USED FOR?

10:41:21 15   A.   SURE. THEY ARE USED TO BASICALLY FUND GRADUATE STUDENTS

10:41:24 16   TO PAY THEM A SMALL STIPEND AND TO ALSO PAY THEIR TUITION AND

10:41:30 17   FEES.

10:41:30 18   Q.   AND FOR WHAT KIND OF -- WHAT KIND OF THINGS WERE YOU DOING

10:41:34 19   FOR THEIR RESEARCH?

10:41:35 20   A.   SO, FOR EXAMPLE, ONE OF THE STUDENTS I HAD DOING AN

10:41:38 21   IMPLEMENTATION OF AN IGMP PROXY. I WON'T GO INTO THE

10:41:45 22   EXPLANATION, BUT HE WAS IMPLEMENTING A PROTOCOL THAT COULD GO

10:41:48 23   INTO A HOST AND WOULD COMMUNICATE WITH A CISCO ROUTER IN A

10:41:54 24   FUNCTION THAT THEY WERE DEVELOPING.

10:41:56 25   SO I MEAN, ALL SORTS OF KIND OF DETAILED RESEARCH PROBLEMS

10:41:58 1   THAT WE WOULD THEN HOPE TO PUBLISH AND THAT THE STUDENTS WOULD

10:42:01 2   WRITE THEIR DISSERTATIONS BASED ON THAT.

10:42:04 3   Q.   SO COUNSEL WENT THROUGH SOME RESEARCH GRANTS THAT YOU HAD

10:42:09 4   RECEIVED FROM CISCO. DO YOU RECALL THOSE?

10:42:11 5   A.   YES.

10:42:11 6   Q.   DO YOU RECALL WHAT KIND OF PROJECTS YOU WERE WORKING ON?

10:42:16 7   A.   YES. THE ONE I MENTIONED ABOUT IGMP WAS ONE EXAMPLE.

10:42:20 8   THERE WAS OTHER SUPPORT FOR A STUDENT WHO IS BUILDING A

10:42:26 9   VISUALIZATION FOR MULTICAST BY LOGGING INTO ROUTERS AND

10:42:29 10   SELECTING INFORMATION AND THEN PROCESSING IT AND DISPLAYING IT.

10:42:34 11   ONE STUDENT DEVELOPED A NEW VARIANT OF TCP, SO THOSE KINDS OF

10:42:39 12   PROJECTS.

10:42:41 13   Q.   DO YOU GET RESEARCH GRANTS FROM OTHER COMPANIES?

10:42:46 14   A.   I DO. IN FACT, CISCO IS A PRETTY SMALL PORTION OF THE

10:42:48 15   AMOUNT OF MONEY THAT I'VE GOTTEN IN RESEARCH OVER THE COURSE OF

10:42:53 16   MY YEARS AT UCSB. IT'S IN THE TENS OF MILLIONS OF DOLLARS I'VE

10:42:59 17   RECEIVED IN RESEARCH MONEY.

10:43:01 18   Q.   DOES THAT MONEY GO TO YOU?

10:43:03 19   A.   I'M SORT OF LIKE A SMALL ENTREPRENEUR, RIGHT. I TRY AND

10:43:07 20   GET THE BEST ONES, WE TO FIND COMPELLING PROJECTS AND TRY TO

10:43:09 21   GET FUNDING FOR THEM TO WORK ON THOSE PROJECTS.

10:43:12 22   EVENTUALLY THEY GRADUATE AND LEAVE, AND SO I STILL GET

10:43:15 23   PAID WHAT I GET PAID FROM THE UNIVERSITY REGARDLESS OF HOW MUCH

10:43:18 24   RESEARCH FUNDING I BRING IN.

10:43:20 25   Q.   NOW, COUNSEL TALKED A BIT WITH YOU ABOUT RFC'S?

10:43:28 1   A.   YES.

10:43:28 2   Q.   CAN YOU JUST TELL ME WHAT THE RFC IS?

10:43:33 3   A.   RIGHT.   THE RFC IS A STANDARD THAT COMES OUT OF THE

10:43:38 4   ENGINEERING TASK FORCE.   IT STANDS FOR REQUEST FOR COMMENTS.

10:43:41 5   YOU WOULDN'T THINK A DOCUMENT CALLED REQUEST FOR COMMENTS IS A

10:43:44 6   STANDARD, BUT THAT GOES BACK INTO THE EARLY DAYS OF THE

10:43:52 7   TECHNOLOGY.

10:43:52 8   SO EVERYBODY UNDERSTANDS THOSE ARE STANDARDS.   THEY ARE

10:43:55 9   PUBLISHED.   THEY DEAL WITH PROTOCOLS.   THEY DESCRIBE THE

10:43:57 10   FORMATS OF THE BITS.   THEY ARE VERY DETAILED BECAUSE THESE

10:44:00 11   KINDS OF EXCHANGES GO BETWEEN COMPUTERS AND THERE CAN'T BE ANY

10:44:06 12   AMBIGUITY ABOUT WHAT THE COMMUNICATION IS AND WHAT THE DATA

10:44:10 13   MEANS.

10:44:11 14   Q.   SO DO THOSE STANDARDS DEFINE ANYTHING ABOUT THE USER

10:44:14 15   INTERFACE?

10:44:14 16   A.   NO.   THEY DEFINE WHAT THE PROTOCOLS ARE WITH THE DATA THAT

10:44:22 17   GETS SENT OVER THE NETWORK.   THEY DON'T SAY HOW THE USER

10:44:25 18   INTERFACE SHOULD WORK.   THEY DON'T SAY WHAT THE COMMANDS SHOULD

10:44:27 19   BE.   ALL OF THAT IS LEFT UP TO THE IMPLEMENTER.

10:44:30 20   Q.   IS THERE ANY ONE OF THESE STANDARDS BODIES THAT YOU TALKED

10:44:33 21   ABOUT FOR USER INTERFACES?

10:44:34 22   A.   NO, NO, NOT FOR THE COMMANDS OR THE OUTPUTS OR THE HELP

10:44:42 23   DESCRIPTIONS.   THERE'S NO STANDARDS BODY.   THERE'S SIMPLY NONE

10:44:45 24   THAT EXISTS THAT PRODUCES ANY KIND OF STANDARD THAT SAYS WHAT

10:44:48 25   THOSE COMMANDS SHOULD BE.

ALMEROTH REDIRECT BY MR. NELSON   1402

10:44:50 1   Q.   NOW, COUNSEL WENT THROUGH WITH YOU SOME DOCUMENTS WHERE

10:44:56 2   THERE ARE A NUMBER OF TERMS IN THERE THAT MIGHT BE USED IN THE,

10:45:00 3   YOU KNOW, SOME OF THE THESE STANDARDS DOCUMENTS?

10:45:02 4   A.   YES.

10:45:02 5   Q.   SO -- AND THEN HE SHOWED YOU LIKE A SLIDE FROM DR. BLACK.

10:45:09 6   DO YOU REMEMBER?

10:45:09 7   A.   YES.

10:45:09 8   Q.   YOU SAID, I THINK, THAT YOU DISAGREED WITH DR. BLACK'S

10:45:13 9   METHODOLOGY; IS THAT RIGHT?

10:45:14 10   A.   YES.

10:45:14 11   Q.   WELL, WHY? CAN YOU EXPLAIN?

10:45:16 12   A.   WELL, ESSENTIALLY WHAT HE DID WAS HE TOOK ALL OF THE WORDS

10:45:20 13   FROM ALL 506 COMMANDS AND MADE A LIST OF THOSE AND THEN

10:45:24 14   DETERMINED IF ANY OF THOSE WORDS APPEARED IN ANY OF THE RFC'S.

10:45:30 15   AND I MEAN, THAT -- THAT ISN'T A USEFUL EXERCISE. THAT

10:45:34 16   DOESN'T PRODUCE ANYTHING. THAT'S ALMOST LIKE TAKING A

10:45:40 17   SHAKESPEARE PLAY AND COMPARING IT TO THE DICTIONARY AND SAY,

10:45:44 18   WELL, ALL THE WORDS APPEAR THERE, SO SHAKESPEARE ISN'T

10:45:50 19   CREATIVE. THAT'S NOT REALLY AN EXERCISE OF ILLUMINATING THIS

10:45:53 20   IDEA OF WHETHER OR NOT THE COMMANDS WERE CREATIVE IN THEIR WORD

10:45:56 21   CHOICE OR IN THE ORDERING OF THE WORDS.

10:45:57 22   Q.   SO REMIND US AGAIN OF WHAT THE TIMEFRAME IS WHEN YOU ARE

10:46:01 23   SUPPOSED TO LOOK AT THE CREATIVITY?

10:46:06 24   A.   IT'S AT THE TIME OF CREATION.

10:46:08 25   Q.   OKAY. AND WHY IS THAT IMPORTANT?

10:46:11 1   A.   WELL, THAT'S IMPORTANT BECAUSE IF YOU LOOK AT, FOR

10:46:15 2   EXAMPLE, THE MODES AND PROMPTS THAT WERE DEVELOPED BY

10:46:18 3   MR. LOUGHEED IN ABOUT 1986, IF YOU THINK ABOUT THAT PROCESS

10:46:24 4   THAT HE WENT THROUGH THEN AND THE CREATIVITY INVOLVED IN

10:46:28 5   DETERMINING THAT THE DIFFERENT MODES WOULD BE INTERRELATED,

10:46:31 6   WHAT THE PROMPTS WOULD BE, THAT WAS A CREATIVE PROCESS. IF YOU

10:46:36 7   WERE TO TRY AND SAY, WOULD THE CREATION OF THOSE MODES AND

10:46:41 8   PROMPTS BE CREATIVE? THE ANSWER WOULD BE, NO, BECAUSE THEY

10:46:45 9   ALREADY EXIST.

10:46:46 10   SO IT'S IMPORTANT TO LOOK BACK AT THE POINT WHEN THEY WERE

10:46:49 11   ACTUALLY CREATED TO DETERMINE IF THERE WAS CREATIVITY THEN AS

10:46:52 12   OPPOSED TO LOOKING AT SOME POINT IN THE FUTURE WHEN SOMEBODY

10:46:55 13   ELSE MIGHT HAVE ALREADY DEVELOPED SOMETHING SIMILAR.

10:46:59 14   Q.   SO WHILE WE ARE TALKING ABOUT THE MODES AND PROMPTS, COULD

10:47:02 15   WE PUT UP SLIDE 9 THAT ARISTA'S COUNSEL USED.

10:47:08 16   MR. VAN NEST: IT'S YOUR SLIDE 9, I BELIEVE.

10:47:10 17   MR. NELSON: NO, YOUR SLIDE 9. THE ONE WITH THE

10:47:13 18   MODES AND PROMPTS ON IT. YEAH, THAT ONE.

10:47:16 19   Q.   SO DO YOU RECALL THE DISCUSSION ABOUT THIS ONE?

10:47:24 20   A.   YES.

10:47:25 21   Q.   SO JUST REMIND US OF YOUR UNDERSTANDING OF WHAT DR. BLACK

10:47:29 22   IS SAYING ABOUT THESE MODES AND PROMPTS HERE?

10:47:31 23   A.   WELL, WHAT HE'S SAYING IS THAT THE SAME KINDS OF MODES AND

10:47:38 24   PROMPTS EXIST IN OTHER NETWORKING COMPANIES. IN THE THREE HE

10:47:43 25   IDENTIFIED HERE IN ADDITION TO CISCO WAS FOUNDRY, BROCADE, AND

10:47:47 1   DELL.

10:47:47 2   AND I THINK AS MR. VAN NEST IDENTIFIED THERE WERE SOME

10:47:51 3   ADDITIONAL COLUMNS THAT IDENTIFIED SOME ADDITIONAL PROVIDERS.

10:47:56 4   Q.   DID DR. BLACK SAY THAT ANY OF THIS ARRANGEMENT OF MODES

10:48:01 5   AND PROMPTS THAT ARE SHOWN ON THIS SLIDE CAME BEFORE CISCO?

10:48:04 6   A.   NO.

10:48:05 7   Q.   ARE YOU AWARE OF ANY CONTENTION IN THE CASE THAT ANY OF

10:48:09 8   THAT ARRANGEMENT OF MODES AND PROMPTS CAME BEFORE CISCO?

10:48:12 9   A.   I AM NOT AWARE OF ANY CONTENTION THAT THOSE MODES AND

10:48:15 10   PROMPTS EXISTED BEFORE MR. LOUGHEED INVENTED THEM IN 1986.

10:48:22 11   Q.   NOW, CAN WE PUT UP EXHIBIT 851, THAT PARSER-POLICE

10:48:28 12   MANIFESTO WE'VE HEARD ABOUT A FEW TIMES?

10:48:32 13   A.   YES, SIR.

10:48:35 14   Q.   SO YOU ARE ASKED A FEW QUESTIONS ABOUT THIS, AND IF WE GO

10:48:39 15   TO THE SYNTAX DESIGN GUIDELINE SECTION ITSELF, I WANT TO TALK

10:48:43 16   ABOUT NUMBER SIX.

10:48:51 17   SO YOU HAD SOME DISCUSSIONS ABOUT NUMBER 6, "WHEN NAMING A

10:48:56 18   COMMAND, TRY TO PICK NAMES THAT WOULD BE FAMILIAR TO PEOPLE IN

10:48:59 19   THE INDUSTRY."

10:48:59 20   DO YOU SEE THAT?

10:49:00 21   A.   I DO.

10:49:00 22   Q.   AND THEN THERE WAS SOME DISCUSSION ABOUT WHETHER TERMS HAD

10:49:03 23   BECOME KNOWN TO PEOPLE IN THE INDUSTRY?

10:49:05 24   A.   THAT'S CORRECT.

10:49:06 25   Q.   OKAY. SO WHAT TIMING ARE YOU LOOKING AT FOR THAT?

10:49:10 1   A.   IT'S ALSO, AGAIN, AT THE TIME OF CREATION. I MEAN, WE CAN

10:49:16 2   THINK ABOUT NOW IN SOME OF THE QUESTIONS I ANSWERED ABOUT THE

10:49:19 3   EXISTENCE OF OSPF AND BGP, THOSE ARE ALL COMMANDS THAT

10:49:23 4   ENGINEERS ARE FAMILIAR WITH TODAY, BUT STILL, THE THING THAT

10:49:30 5   HAS TO BE ANALYZED WITH RESPECT TO CREATIVITY IS TO GO BACK TO

10:49:34 6   WHEN THESE COMMANDS WERE BEING DEVELOPED.

10:49:36 7   AND EVEN IN THE INSTANCE, FOR EXAMPLE, OF IP, WHICH WAS

10:49:39 8   DEVELOPED IN 1981 AND WHEN THESE COMMANDS WERE CREATED, EVEN

10:49:43 9   THOUGH IT WAS SEVERAL YEARS LATER, YOU ARE TALKING ABOUT A VERY

10:49:46 10   SMALL SUBSET OF PEOPLE AND YOU HAVE TO REALLY MAKE A

10:49:50 11   DETERMINATION AS TO WHETHER OR NOT ENGINEERS AT THAT TIME

10:49:55 12   UNDERSTOOD THESE CONCEPTS. AND THAT'S WHAT'S IMPORTANT TO

10:49:59 13   DETERMINING WHETHER OR NOT THERE'S CREATIVITY.

10:50:01 14   Q.   SO IF WE STICK WITH THE ACRONYMS, I THINK YOU CALL THEM

10:50:05 15   ACRONYMS; RIGHT? MAKES SENSE?

10:50:06 16   A.   YES.

10:50:07 17   Q.   SO YOU WERE -- YOU TALKED ABOUT SOME COMMANDS WITH COUNSEL

10:50:11 18   IN THE CISCO CLI THAT WERE SPANNING-TREE. DO YOU RECALL THAT?

10:50:15 19   A.   YES.

10:50:16 20   Q.   NOW, IS THAT AN ACRONYM FOR THAT KIND OF PROTOCOL, I THINK

10:50:21 21   YOU SHOWED ME THE SPANNING-TREE PROTOCOL, THAT PEOPLE USE IN

10:50:24 22   THE INDUSTRY?

10:50:24 23   A.   NO. SPANNING-TREE OR SPANNING-TREE IS NOT AN ACRONYM FOR

10:50:36 24   THE SPANNING-TREE PROTOCOL. THE ACRONYM IS STP IS YOU CAN

10:50:40 25   THINK OF WHY SPANNING-TREE WAS USED INSTEAD OF STP, AND THAT

10:50:43 1   WAS A DESIGN CHOICE.

10:50:46 2   Q.   YOU SAID YOU CAN THINK OF WHY SPANNING-TREE WAS USED

10:50:49 3   INSTEAD OF STP. CAN YOU TELL US?

10:50:51 4   A.   THAT WAS AN EXAMPLE THAT AT THE TIME STP WAS NOT REALLY A

10:50:55 5   WELL-RECOGNIZED ACRONYM LIKE IP.

10:50:59 6   SO THE DECISION WAS, BASED ON THESE KINDS OF CRITERIA AND

10:51:02 7   WITH THE INPUT OF OTHER ENGINEERS, TO SPELL IT OUT INSTEAD OF

10:51:06 8   USING STP.

10:51:15 9   Q.   SO NOW I HAVE A FEW QUESTIONS. I'M ON NUMBER 10 THERE,

10:51:18 10   AND I'M STILL ON EXHIBIT 851 FOR THE RECORD.

10:51:21 11   A.   YES.

10:51:22 12   Q.   SO THERE'S A SENTENCE THERE KIND OF IN THE MIDDLE THAT

10:51:24 13   SAYS, "WHAT CONSTITUTES 'SELF EXPLANATORY' WILL VARY BY YOUR

10:51:31 14   TARGET AUDIENCE, SO BE PREPARED TO DEFEND THAT POINT."

10:51:35 15   DO YOU SEE THAT?

10:51:35 16   A.   I DO.

10:51:36 17   Q.   AND YOU WERE REFERENCING THAT. COULD YOU TELL US WHY

10:51:38 18   THAT'S IMPORTANT TO YOU?

10:51:39 19   A.   SURE. AND WHAT'S IMPORTANT ALSO IS THE NEXT SENTENCE,

10:51:43 20   "WHILE A NON-ATM USER, MAY FIND THE COMMAND," AND I WILL STOP

10:51:48 21   READING AT THAT POINT. THERE'S ALSO SPECIALTIES WITHIN THIS

10:51:51 22   FIELD.

10:51:51 23   SO FOR SOME COMMANDS YOU HAVE TO DETERMINE WHETHER THERE'S

10:51:55 24   A COMMUNITY, FOR EXAMPLE, AN ATM, WHICH HERE STANDS FOR

10:52:01 25   ASYNCHRONOUS TRANSFER MODE AND NOT AUTOMATIC TELLER MACHINE.

10:52:07 1   BUT PEOPLE IN THE ASYNCHRONOUS MODE COMMUNITY UNDERSTAND

10:52:11 2   COMMANDS LIKE WHAT'S AFTER THE HIGHLIGHTED

10:52:16 3   "FORWARD-PEAK-CELL-RATE-CLP1." BUT PEOPLE WITHIN THE COMMUNITY

10:52:21 4   WOULD UNDERSTAND THAT.

10:52:22 5   SO THE PERSON DESIGNING THESE COMMANDS REALLY HAS TO

10:52:25 6   UNDERSTAND WHAT THE PROTOCOLS ARE, WHAT THE COMMUNITIES ARE,

10:52:29 7   AND MAKE DECISIONS ABOUT WHETHER OR NOT PEOPLE WITHIN AND

10:52:33 8   OUTSIDE THE COMMUNITY WOULD UNDERSTAND THESE WORD CHOICES.

10:52:38 9   Q.   SO YOU WERE TALKING ABOUT WHETHER SOMETHING IS SETTLED,

10:52:44 10   LIKE MAYBE A TERM OR ACRONYM IS SETTLED. I THINK YOU USED

10:52:48 11   THAT --

10:52:49 12   A.   YES.

10:52:49 13   Q.   CAN YOU EXPLAIN TO US WHAT YOU MEAN BY THAT?

10:52:51 14   A.   SURE. PROTOCOLS GO THROUGH A DEVELOPMENT PROCESS. I

10:52:56 15   MEAN, OBVIOUSLY THEY JUST DON'T SPRING UP OVER NIGHT. AND

10:53:00 16   OFTENTIMES THE PROTOCOLS WILL CHANGE OVER TIME. AND BEFORE

10:53:04 17   THEY'RE CALLED RFC'S, THEY'RE CALLED INTERNET DRAFTS, THEY CAN

10:53:09 18   TAKE YEARS TO DEVELOP. THERE'S ARGUMENTS ABOUT THE WAY THAT

10:53:12 19   THE PROTOCOL SHOULD OPERATE AND THE FORMATS OF THE MESSAGES AND

10:53:15 20   ALL OF THE DETAILS. AND SOMETIMES VENDORS WILL DO

10:53:21 21   IMPLEMENTATIONS BEFORE THE PROTOCOL BECOMES STANDARD SO THAT

10:53:24 22   THEY CAN GET A HEAD START ON MAKING THOSE PRODUCTS AVAILABLE.

10:53:27 23   SO THERE'S KIND OF THIS PROCESS OF EVEN THOUGH THE

10:53:29 24   PROTOCOL IS IN PROCESS AND SOME COMMUNITIES KNOW ABOUT IT, THE

10:53:35 25   SPECIFIC TERMINOLOGY ISN'T REALLY SETTLED, THAT CONTINUES TO

10:53:38 1   TAKE TIME TO SORT OF RESOLVE OVER TIME.

10:53:41 2   AGAIN, IF WE THINK ABOUT THOSE WORDS TODAY, THEY ARE VERY

10:53:45 3   WELL ESTABLISHED. BUT IF YOU THINK ABOUT WHEN THESE COMMANDS

10:53:48 4   WERE BEING CREATED, IT CERTAINLY WASN'T SETTLED TERMINOLOGY.

10:53:54 5   AND IF YOU LOOK AT THE RFC'S AFTER THE FACT TODAY AND TRY

10:53:59 6   TO MATCH THEM UP WITH THE COMMANDS THAT WERE SELECTED, THERE

10:54:01 7   MIGHT BE SOME OVERLAP.

10:54:03 8   Q.   SO YESTERDAY WHEN YOU AND I WERE TALKING, YOU WERE TALKING

10:54:08 9   SOME ABOUT THE CREATIVITY AND THE WORD CHOICE?

10:54:11 10   A.   YES.

10:54:11 11   Q.   THE DISCUSSION THAT YOU JUST TALKED ABOUT, DOES THAT FIT

10:54:16 12   INTO THIS?

10:54:16 13   A.   IT DOES. IF YOU PUT YOURSELF INTO THE FRAME OF MIND OF

10:54:21 14   THE PERSON WHO IS IMPLEMENTING THE PROTOCOL AND HAD THE

10:54:23 15   RESPONSIBILITY OF COMING UP WITH THE COMMANDS, MIGHT BE 1986,

10:54:29 16   SOME COMMANDS EXTENDED INTO THE EARLIER MID-'90S, AND IN THOSE

10:54:33 17   INSTANCES THERE ARE DECISIONS TO BE MADE ABOUT WHAT THE WORD

10:54:36 18   CHOICE IS. AND THAT PROCESS IS CREATIVE. AND I'VE RELIED ON

10:54:39 19   THE EVIDENCE OF WHAT THE MANIFESTO SAYS AND THE DEPOSITION

10:54:42 20   TESTIMONY ABOUT PEOPLE WHO DEVELOPED THE COMMANDS.

10:54:46 21   AND SO REALLY THE OVERALL CONCLUSION IS, DESPITE THE

10:54:51 22   QUESTIONS I GOT FROM MR. VAN NEST, I THINK THERE IS CREATIVITY

10:54:55 23   IN THE CHOICE OF THOSE WORDS.

10:54:57 24   Q.   HOW ABOUT IN THE SEQUENCING?

10:54:59 25   A.   IN THE SEQUENCING AS WELL. WE TALKED LESS ABOUT THE

10:55:02 1   SEQUENCING, BUT REMEMBER THERE ARE THESE HIERARCHIES. AND

10:55:05 2   THERE ARE CHOICES ABOUT WHETHER TO PUT A COMMAND IN A

10:55:09 3   PARTICULAR HIERARCHY OR NOT. AND ALL OF THAT IS IMPORTANT AS

10:55:13 4   PART OF THE CREATIVE PROCESS AS WELL.

10:55:15 5   Q.   SO -- THANK YOU. I WANT TO TURN NOW TO -- YOU GOT SOME

10:55:20 6   QUESTIONS ABOUT THE TECHNICAL MANUALS?

10:55:22 7   A.   YES.

10:55:22 8   Q.   DO YOU RECALL THAT?

10:55:24 9   NOW, DID ARISTA DENY COPYING THE TECHNICAL MANUALS

10:55:31 10   A.   NO. IN FACT, THEY ADMITTED IT. THEY APOLOGIZED FOR IT.

10:55:35 11   THEY SUPPOSEDLY FIRED THE PERSON WHO DID AT LEAST SOME OF THE

10:55:38 12   COPYING, BUT ULTIMATELY THEY ADMITTED TO IT, THEY ADMITTED TO

10:55:41 13   COPYING THE MANUALS.

10:55:42 14   Q.   NOW, YOU ALSO REFERENCED ON YOUR CROSS SEVERAL TIMES ABOUT

10:55:49 15   HOW CISCO MAKES A BUNCH OF DIFFERENT PRODUCTS?

10:55:51 16   A.   YES.

10:55:52 17   Q.   AND DOES THAT HAVE SOME RELEVANCE TO THE NUMBER OF

10:55:56 18   COMMANDS OR OUTPUTS OR SOME OF THE OTHER THINGS YOU ARE TALKING

10:56:00 19   ABOUT THAT WOULD BE IN IOS?

10:56:01 20   A.   IT DOES. IF YOU THINK ABOUT THE FOUR USER INTERFACES AT

10:56:05 21   ISSUE HERE, IOS, IOS XR, IOS XE, AND NX-OS, THEY COVER A BROAD

10:56:12 22   RANGE OF PRODUCTS.

10:56:13 23   CISCO CLEARLY MAKES MANY MORE PRODUCTS AND TYPES OF

10:56:17 24   PRODUCTS THAN ARISTA DOES, AND ARISTA GENERALLY HAS A SERIES OF

10:56:22 25   ETHERNET SWITCHES.

10:56:24 1   THE PROBLEM IS YOU CAN'T LOOK AT ALL OF THE CISCO MANUALS

10:56:28 2   AND SAY, WELL, THEY ONLY TOOK THIS PIECE AND THEY ONLY TOOK

10:56:31 3   THAT PIECE. I MEAN, SOMETIMES THE ANALOGY IS TO AN

10:56:37 4   ENCYCLOPEDIA, THAT JUST BECAUSE YOU COPY ONE PORTION ABOUT

10:56:41 5   ELECTRONIC TRAINS, DOESN'T MEAN THAT IT'S NOT COPYING AND IT'S

10:56:45 6   NOT IMPORTANT BECAUSE YOU DIDN'T COPY THE WHOLE ENCYCLOPEDIA.

10:56:51 7   I ACTUALLY HAD AN EXPERIENCE WITH A STUDENT. HE TOOK MY

10:56:55 8   CLASS, AND HE COPIED THINGS FROM MY 400 PAGE DISSERTATION INTO

10:57:00 9   HIS HOME WORK ASSIGNMENT, WHICH WAS ONLY A COUPLE OF PAGES

10:57:02 10   LONG.

10:57:03 11   AND WHEN I CAUGHT HIM, IT WASN'T ABOUT THAT HE TOOK ALL OF

10:57:07 12   THE DISSERTATION, BUT ABOUT THE SIGNIFICANT PORTIONS HE DID

10:57:11 13   TAKE AND USE IN HIS ASSIGNMENT.

10:57:13 14   Q.   NOW, DID HE GET A GOOD GRADE?

10:57:16 15   A.   HE DID NOT.

10:57:17 16   Q.   NOW, THE -- I WANT TO TURN TO A COUPLE OF OTHER THINGS,

10:57:23 17   THESE WERE SOME THINGS THAT YOU AND I WERE DISCUSSING

10:57:26 18   YESTERDAY, AND I NOW HAVE THE EXHIBITS AND WE WORKED THAT ALL

10:57:30 19   OUT.

10:57:30 20   SO THE FIRST ONE I WANT TO TALK ABOUT --

10:57:32 21   I'M NOT SURE THE COURT HAS THIS ONE YET. THIS IS 4799,

10:57:36 22   YOUR HONOR.

10:57:36 23   THE COURT: THANK YOU.

10:57:37 24   MR. NELSON: AND WE'VE WORKED EVERYTHING OUT WITH

10:57:40 25   THIS.

10:57:40 1   THE COURT: THAT'S GREAT.

10:57:42 2   MR. VAN NEST: NO OBJECTION, YOUR HONOR.

10:57:43 3   THE COURT: THANK YOU. IT WILL BE ADMITTED.

10:57:44 4   (PLAINTIFF'S EXHIBIT 4799 WAS ADMITTED INTO EVIDENCE.)

10:57:44 5   MR. NELSON: ALL RIGHT. THANK YOU.

10:57:46 6   MAY I APPROACH THE WITNESS?

10:57:48 7   THE COURT: YES.

10:57:49 8   MR. NELSON: I DON'T THINK HE HAS THIS COPY.

10:58:03 9   Q.   SO WE ARE LOOKING AT THE FIRST PAGE OF 4799; IS THAT

10:58:12 10   RIGHT? I MEAN ON THE SCREEN.

10:58:13 11   A.   YES.

10:58:13 12   Q.   OKAY. AND CAN YOU TELL ME WHAT 4799 IS?

10:58:16 13   A.   THESE WERE THE 216 HELP DESCRIPTIONS FROM IOS XR 5.1.4

10:58:25 14   THAT ARE CONTAINED IN ARISTA.

10:58:26 15   Q.   NOW, WE TALKED ABOUT THIS A BIT YESTERDAY, BUT WHAT'S THE

10:58:31 16   RELATIONSHIP BETWEEN IOS XR 5.1.4 AND 5.2?

10:58:37 17   A.   IOS XR 5.2 IS A LATER VERSION OF IOS XR, AND IT

10:58:45 18   ENCOMPASSES ALL OF THE FEATURES OF IOS 5.1.4, AND IT INCLUDES

10:58:51 19   SOME ADDITIONAL FUNCTIONALITY. IT'S A LATER REVISION THAT

10:58:54 20   INCLUDES SOME ADDITIONAL FUNCTIONALITY.

10:58:56 21   Q.   SO BASED UPON YOUR ANALYSIS OF THE PRODUCTS IN THE CODE

10:59:01 22   AND STUFF YOU LOOKED AT, THE HELP DESCRIPTIONS THAT ARE SHOWN

10:59:04 23   HERE FROM 5.1.4, WOULD THOSE ALSO BE IN 5.2?

10:59:10 24   A.   YES, THEY WOULD.

10:59:10 25   Q.   OKAY. AND, NOW, IF I LOOK ON THE RIGHT-HAND COLUMN, CAN

10:59:14 1   YOU SHOW US WHAT YOU'RE DEPICTING HERE IN THE RIGHT-HAND

10:59:18 2   COLUMN?

10:59:19 3   A.   THE RIGHT-HAND COLUMN IS WHERE THOSE HELP DESCRIPTIONS

10:59:21 4   APPEAR IN EOS, AND THE VERSION NUMBER THAT'S GIVEN IS 4.13.5.

10:59:29 5   Q.   AND DID YOU ANALYZE VERSION 4.13.5?

10:59:33 6   A.   YES.

10:59:34 7   Q.   AND NOW FOR -- WERE THERE ALSO SOME LATER VERSIONS OF EOS

10:59:37 8   THAT YOU LOOKED AT?

10:59:38 9   A.   YES.

10:59:39 10   Q.   OKAY. AND DID YOU?

10:59:42 11   MR. VAN NEST: OBJECTION, YOUR HONOR. OUTSIDE THE

10:59:44 12   REPORT.

10:59:45 13   MR. NELSON: IT'S NOT. I TALKED TO HIM ABOUT IT

10:59:47 14   ALREADY.

10:59:47 15   THE COURT: OUTSIDE THE EXPERT REPORT OR THE

10:59:49 16   DOCUMENT?

10:59:51 17   MR. VAN NEST: OUTSIDE THE REPORT. NO SPECIFIC

10:59:54 18   ANALYSIS, THERE'S NO SPECIFIC ANALYSIS OF ANY OTHER --

10:59:59 19   THE COURT: SHOW ME IN THE REPORT.

11:00:00 20   MR. NELSON: YEAH, I CAN, YOUR HONOR.

11:00:01 21   THE COURT: LET'S DO THAT. DO YOU HAVE THE SECTION?

11:00:37 22   MR. NELSON: I DO. PARAGRAPH 124, YOUR HONOR.

11:00:43 23   THE COURT: ARE WE GOING TO DO A SIDEBAR?

11:00:58 24   (SIDEBAR DISCUSSION ON THE RECORD.)

11:00:59 25   THE COURT: WHAT ARE YOU REFERRING TO?

11:01:01   1   MR. NELSON: PARAGRAPH 124, YOUR HONOR. IT'S A

11:01:04   2   LITTLE DISCONCERTING BECAUSE I ALREADY COVERED THIS MORNING

11:01:07   3   WITH HIM ALREADY AND EVERYTHING WAS OKAY.

11:01:09   4   SO WHAT HE SAYS HERE, YOUR HONOR, PROBABLY EASIER, THROUGH

11:01:11   5   MY OWN INSPECTION OF ARISTA IT WAS MY INSPECTION TESTING

11:01:26   6   ARISTA'S SWITCHES, I HAVE CONFIRMED THAT THE OPERATION OF THE

11:01:29   7   EOS FOR ALL ACCUSED VERSIONS FOR PURPOSES OF THE REPORT ARE

11:01:33   8   SUBSTANTIALLY THE SAME IF NOT IDENTICAL.

11:01:35   9   THE COURT: WHERE IS THAT COMING FROM?

11:01:38 10   MR. NELSON: IT'S PARAGRAPH 124 OF DR. ALMEROTH'S

11:01:40 11   REPORT. AND THEN WITH RESPECT TO THE REBUTTAL IT'S THE

11:01:43 12   SUPPLEMENTAL REBUTTAL. DR. BLACK, HE ACTUALLY ANALYZED A LATER

11:01:48 13   VERSION.

11:01:49 14   THE COURT: DR. BLACK DID?

11:01:50 15   MR. NELSON: DR. BLACK, CORRECT. IN RESPONDING TO

11:01:57 16   THE HELP DESCRIPTIONS ISSUE. AND HE ANALYZED 4.14.5, NEVER

11:02:02 17   ONCE RAISED THE ISSUE THAT THERE MIGHT BE DIFFERENCES OR ANY OF

11:02:05 18   THOSE KINDS OF THINGS. SO THIS IS GETTING SUPER HYPER

11:02:11 19   TECHNICAL.

11:02:11 20   MR. FERRALL: OUR POINT, YOUR HONOR, IS THAT THEY

11:02:14 21   ONLY DID A HELP STRING BY HELP STRING ANALYSIS OF THAT ONE

11:02:17 22   VERSION 4.13.5 AND THEY DIDN'T EVER SAY THAT ALL THOSE HELP

11:02:22 23   STRINGS APPEAR IN OTHER VERSIONS OF THE EOS. AND --

11:02:31 24   MR. VAN NEST: HE'S GOT A GENERAL STATEMENT,

11:02:32 25   YOUR HONOR, THAT HE INSPECTED EVERYTHING.

11:02:35 1   THE COURT: WELL, I'M GOING TO HOLD HIM TO HIS REPORT

11:02:37 2 AT THAT LEVEL. OKAY. THE OBJECTION IS OVERRULED.

11:02:58 3   (SIDEBAR CONFERENCE CONCLUDED.)

11:02:58 4   MR. NELSON: MAY I PROCEED, YOUR HONOR?

11:03:01 5   THE COURT: YES, YOU MAY.

11:03:02 6 BY MR. NELSON:

11:03:03 7 Q.   SO, DR. ALMEROTH, I'M TALKING ABOUT THESE IOS XR HELP

11:03:06 8 DESCRIPTIONS, FOR -- YOU ANALYZED OTHER VERSIONS OF EOS IN THIS

11:03:10 9 CASE; RIGHT?

11:03:10 10 A.   I DID.

11:03:11 11 Q.   AND DID YOU CONFIRM THAT THE OPERATION WAS SUBSTANTIALLY

11:03:15 12 THE SAME, IF NOT IDENTICAL, WITH RESPECT TO THOSE OTHER

11:03:18 13 VERSIONS?

11:03:18 14 A.   THAT'S CORRECT.

11:03:19 15 Q.   AND DID DR. BLACK HAVE A REBUTTAL REPORT AND ATTEMPT TO --

11:03:25 16 OR EXCUSE ME, OPPORTUNITY IS THE WORD I WAS LOOKING FOR TO

11:03:33 17 RESPOND TO YOUR ALLEGATIONS REGARDING THE HELP DESCRIPTIONS?

11:03:35 18 A.   HE DID HAVE AN OPPORTUNITY.

11:03:36 19 Q.   DID HE EVER SAY THAT YOUR STATEMENT ABOUT THE OPERATION

11:03:39 20 BEING THE SAME IN OTHER VERSIONS WAS WRONG?

11:03:43 21 A.   NO, HE DID NOT.

11:03:44 22 Q.   OKAY. THANK YOU.

11:03:46 23   SO NOW I WOULD LIKE TO TURN TO ANOTHER EXHIBIT THAT WE

11:03:51 24 TALKED ABOUT YESTERDAY. THE FIRST ONE BEING EXHIBIT 4822.

11:04:03 25 A.   I HAVE IT HERE.

11:04:04 1   Q.   OKAY. YOU HAVE IT IN FRONT OF YOU? AND 4822, CAN YOU

11:04:07 2   TELL US WHAT THAT IS, SIR?

11:04:08 3   A.   THAT'S THE INTERROGATORY RESPONSE NUMBER 9 DATED

11:04:12 4   DECEMBER 5TH, 2014.

11:04:15 5   MR. NELSON: AT THIS POINT I MOVE EXHIBIT 4822 INTO

11:04:19 6   EVIDENCE YOUR HONOR.

11:04:19 7   MR. VAN NEST: NO OBJECTION.

11:04:22 8   THE COURT: IT WILL BE ADMITTED.

11:04:24 9   (PLAINTIFF'S EXHIBIT 4822 WAS ADMITTED INTO EVIDENCE.)

11:04:24 10   MR. NELSON: COULD WE PUT THE FIRST PAGE UP THERE,

11:04:27 11   MR. FISHER.

11:04:28 12   Q.   ALL RIGHT. SO WE LAWYERS AND WE ALL KNOW WHAT

11:04:30 13   INTERROGATORIES ARE, BUT PROBABLY NOT EVERYBODY IN THE WORLD

11:04:33 14   KNOWS THAT TERM. SO CAN YOU JUST EXPLAIN TO US WHAT YOUR

11:04:37 15   UNDERSTANDING OF THAT IS?

11:04:38 16   A.   YES. AN INTERROGATORY IS A SERIES OF QUESTIONS SERVED BY

11:04:42 17   ONE PARTY IN A LAWSUIT TO ANOTHER, WHICH THEY THEN HAVE TO

11:04:47 18   RESPOND TO. AND IF YOU LOOK AT THE TITLE HERE IT SAYS,

11:04:52 19   "DEFENDANT ARISTA NETWORKS NINTH SUPPLEMENTAL RESPONSES TO

11:04:56 20   PLAINTIFF CISCO SYSTEMS'S FIRST SET OF INTERROGATORIES, NUMBER

11:05:02 21   9."

11:05:02 22   Q.   SO THEN IF WE LOOK AT PAGE 8, YOU BEGIN WITH A SERIES OF

11:05:08 23   TABLES. DO YOU SEE THAT?

11:05:09 24   A.   YES, SIR, I DO.

11:05:10 25   Q.   AND CAN YOU TELL US WHAT THOSE TABLES ARE?

11:05:13 1   A.   THE TABLES ARE DESCRIBED IN THE PARAGRAPH PRECEDING THE

11:05:17 2   TABLE. IT SAYS, I WILL START WITH THE THIRD -- SECOND

11:05:24 3   SENTENCE. "TO DATE, ARISTA HAS IDENTIFIED CERTAIN INFORMATION

11:05:27 4   REGARDING THE INDIVIDUALS INVOLVED IN THE CREATION,

11:05:31 5   DEVELOPMENT, AND/OR IMPLEMENTATION OF THE ACCUSED EOS CLI

11:05:36 6   COMMANDS."

11:05:38 7   AND IT SAYS, "THAT INFORMATION IS SET FORTH IN THE CHART."

11:05:40 8   IT IDENTIFIES THE ACCUSED CLI COMMAND, IT THEN IDENTIFIES THE

11:05:45 9   ARISTA EMPLOYEE WITH KNOWLEDGE OF COMMAND CREATION,

11:05:49 10   DEVELOPMENT, AND/OR IMPLEMENTATION, AND THEN THE CORRESPONDING

11:05:53 11   DATE.

11:05:54 12   Q.   AND THAT CORRESPONDING DATE, WHAT'S THAT?

11:05:57 13   A.   THAT'S THE DATE OF CREATION, DEVELOPMENT, AND/OR

11:06:00 14   IMPLEMENTATION.

11:06:01 15   Q.   DOES THAT HAVE ANYTHING TO DO WITH WHEN THAT COMMAND WAS

11:06:04 16   ADDED TO EOS?

11:06:05 17   A.   IT DOES. THAT'S WHAT THAT DATE IS.

11:06:07 18   Q.   OKAY. SO NOW, I WOULD LIKE TO LOOK AT --

11:06:12 19   AND I MOVED 48 INTO EVIDENCE ALREADY; CORRECT?

11:06:16 20   THE COURT: YES, YOU DID. THAT'S WHY WE ARE LOOKING

11:06:19 21   AT IT.

11:06:19 22   MR. NELSON: THANK YOU. I APPRECIATE IT.

11:06:22 23   Q.   NOW, TURNING TO 4823 AND THAT'S IN FRONT OF YOU?

11:06:26 24   A.   YES.

11:06:26 25   Q.   CAN YOU TELL US WHAT EXHIBIT 4823 IS?

11:06:30   1   A.   THAT'S ANOTHER INTERROGATORY. THIS IS FROM ARISTA ALSO TO

11:06:34   2   CISCO.

11:06:35   3   Q.   AND IF WE TURN --

11:06:38   4   WELL, ACTUALLY AT THIS POINT, BEFORE I TURN ANYWHERE,

11:06:40   5   YOUR HONOR?

11:06:40   6   MR. NELSON: I WOULD MOVE EXHIBIT 4823 INTO EVIDENCE.

11:06:43   7   MR. VAN NEST: NO OBJECTION YOUR HONOR.

11:06:45   8   THE COURT: IT WILL BE ADMITTED.

11:06:47   9   (PLAINTIFF'S EXHIBIT 4823 WAS ADMITTED INTO EVIDENCE.)

11:06:47 10   BY MR. NELSON:

11:06:48 11   Q.   SO IF WE GO TO -- I BELIEVE IT'S PAGE 7 IS WHERE IT

11:06:53 12   BEGINS.

11:06:55 13   A.   YES.

11:06:55 14   THE COURT: I THINK THAT MISSTATED IT. HE IDENTIFIED

11:06:58 15   THE DOCUMENT. I THINK THAT WAS MISSTATED. HE SAID IT WAS AN

11:07:01 16   INTERROGATORY FROM ARISTA TO CISCO. I DON'T THINK THAT'S WHAT

11:07:06 17   THIS IS.

11:07:07 18   THE WITNESS: THIS IS A RESPONSE.

11:07:08 19   MR. NELSON: OKAY. LET'S START THAT OVER SO WE CAN

11:07:11 20   GET IT CORRECT.

11:07:12 21   THE WITNESS: YES.

11:07:12 22   BY MR. NELSON:

11:07:13 23   Q.   SO EXHIBIT 4823, WHO ASKED THE INTERROGATORY?

11:07:16 24   A.   CISCO ASKED THE INTERROGATORY AND ARISTA PROVIDED THE

11:07:20 25   RESPONSE.

11:07:20	1	THE COURT: THANK YOU.
11:07:21	2	MR. NELSON: OKAY.
11:07:22	3	Q. SO THE DOCUMENT THAT WE HAVE HERE, THIS IS WHAT?
11:07:27	4	A. THE SUBSTANCE OF THAT RESPONSE THAT CAME FROM ARISTA.
11:07:31	5	Q. OKAY. SO THEN IF WE GO TO THE SEVENTH PAGE OF THE
11:07:38	6	DOCUMENT?
11:07:38	7	A. YES.
11:07:39	8	Q. YOU SEE A SERIES OF CHARTS THAT BEGINS AND KIND OF GOES ON
11:07:43	9	FOR MAYBE ANOTHER 10, 11 PAGES?
11:07:47	10	A. YES.
11:07:47	11	Q. SO WHAT IS THIS?
11:07:49	12	A. THIS IS A TABLE OF COMMANDS AND AN IDENTIFICATION OF WHERE
11:07:55	13	IN THE SOURCE CODE THOSE COMMANDS APPEAR, AND THEN ALSO THE
11:08:00	14	FIRST ARISTA PRODUCT, THE EOS VERSION NUMBER THAT CONTAINED
11:08:04	15	THOSE COMMANDS.
11:08:06	16	Q. SO FOR BOTH 4822 AND 4823, DO YOU UNDERSTAND THE COMMANDS
11:08:14	17	ARE THE ACCUSED COMMANDS?
11:08:15	18	A. YES, THOSE ARE THE ACCUSED COMMANDS.
11:08:19	19	Q. NOW, HOW DID THESE RESPONSES TO EXHIBIT -- IN
11:08:25	20	EXHIBITS 4822 AND 4823 INFORM YOUR OPINIONS?
11:08:28	21	A. THEY WERE PART OF WHAT I CONSIDERED, AND THEY INFORMED MY
11:08:32	22	OPINION BECAUSE I BELIEVE THEY ARE A DESCRIPTION BY ARISTA THAT
11:08:37	23	THESE COMMANDS, THE COMMANDS THAT HAVE BEEN IDENTIFIED BY
11:08:40	24	ARISTA AS HAVING BEEN COPIED, ARE, IN FACT, IN THE ARISTA
11:08:43	25	PRODUCTS. AND THEY IDENTIFIED WHEN THEY FIRST BECAME AVAILABLE

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11:08:47   1        IN THE ARISTA PRODUCTS.

11:08:49   2        Q.   ALL RIGHT.

11:08:52   3              MR. NELSON:  CAN I JUST HAVE A MOMENT, YOUR HONOR, TO

11:08:54   4        CONFER WITH MR. PAK?

11:08:56   5              THE COURT:  SURE.

11:08:57   6           (OFF-THE-RECORD DISCUSSION.)

11:09:03   7              MR. NELSON:  MR. PAK HAS CONFIRMED FOR ME THAT I'M

11:09:07   8        FINISHED, YOUR HONOR.

11:09:08   9              THE COURT:  THAT'S GOOD.

11:09:09  10          OKAY.  ANYTHING ELSE, MR. VAN NEST?

11:09:11  11              MR. VAN NEST:  NOTHING FURTHER YOUR HONOR.

11:09:12  12              THE COURT:  THANK YOU.  AND, DR. ALMEROTH, THANK YOU

11:09:14  13        FOR YOUR TESTIMONY.  YOU MAY STEP DOWN.

11:09:17  14              THE WITNESS:  THANK YOU, YOUR HONOR.

11:09:24  15              THE COURT:  SO DO WE GET THESE -- DO WE TAKE

11:09:40  16        DR. ALMEROTH'S BINDERS?

11:09:41  17          DR. ALMEROTH, THOSE ARE OURS.

11:09:48  18              MR. NELSON:  DO YOU WANT US TO TAKE ALL OF THOSE OUT

11:09:50  19        OR DO IT AT LUNCH?

11:09:52  20              THE COURT:  AS LONG AS YOUR NEXT WITNESS WILL BE

11:09:54  21        COMFORTABLE WITH THEM THERE, YOU CAN DO IT AT LUNCH.  YOUR

11:09:58  22        CHOICE.

11:09:59  23              MR. NELSON:  IT'S COZY.

11:10:00  24              THE COURT:  IT'S COZY.  THAT'S A NICE WAY OF BEING

11:10:03  25        LOOKING AT IT.
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11:10:04   1          MR. PAK, YOUR NEXT WITNESS.

11:10:06   2              MR. PAK:  YES, WE ACTUALLY HAVE A FEW VIDEO TESTIMONY

11:10:08   3   OF WITNESSES THAT ARE NOT TESTIFYING LIVE.

11:10:11   4              THE COURT:  OKAY.  THE COURT REPORTER IS EXCUSED FROM

11:10:14   5   TRANSCRIBING THE VIDEO, AND THE TRANSCRIPT WILL BE SUBMITTED.

11:10:18   6              MR. PAK:  YES, YOUR HONOR.

11:10:18   7              THE COURT:  OF JUST THE CLIPS THAT ARE PLAYED.  OKAY.

11:10:39   8              MR. PAK:  YOUR HONOR, WE WILL BE PLAYING THE VIDEO

11:10:41   9   TESTIMONY OF MR. JEFFREY WHEELER WHO WAS ONE OF THE INVENTORS

11:10:46  10   ON THE '526 PATENT.  AND AFTER THE VIDEO IS PLAYED, WE WILL BE

11:10:51  11   SUBMITTING INTO EVIDENCE A FEW EXHIBITS FROM HIS DEPOSITION

11:10:54  12   TESTIMONY.

11:10:54  13              THE COURT:  OKAY.

11:11:10  14        (VIDEO DEPOSITION OF JEFFREY WHEELER WAS PLAYED INTO THE

11:35:28  15   RECORD.)

11:35:28  16              MR. PAK:  SO, YOUR HONOR, THAT'S THE END OF THE VIDEO

11:35:33  17   TESTIMONY OF MR. WHEELER.  I HAVE TWO EXHIBITS TO MOVE IT BASED

11:35:37  18   ON THAT.

11:35:38  19              THE COURT:  OKAY.

11:35:41  20              MR. PAK:  SO, MR. FISHER, IF YOU COULD PUT UP THE

11:35:44  21   TRIAL EXHIBIT 65.  AND JUST TO BE CLEAR ON THE RECORD, THAT WAS

11:35:47  22   DEPOSITION EXHIBIT NUMBER 22, AND MR. WHEELER TALKED ABOUT IT,

11:35:54  23   BUT NOW IT'S BEEN RELABELED TRIAL EXHIBIT 65.  AND AT THIS TIME

11:35:59  24   I WOULD LIKE TO ADMIT TRIAL EXHIBIT 65 INTO THE RECORD.

11:36:03  25              MR. KRISHNAN:  NO OBJECTION YOUR HONOR.
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11:36:05 1   THE COURT: DID WILL BE ADMITTED.

11:36:07 2   (PLAINTIFF'S EXHIBIT 65 WAS ADMITTED INTO EVIDENCE.)

11:36:07 3   MR. PAK: THIS IS THE FEATURE FUNCTIONAL

11:36:08 4 SPECIFICATION FOR R4.1 UM CLI. AND THE OTHER DOCUMENT I WOULD

11:36:14 5 LIKE TO MOVE INTO THE RECORD --

11:36:16 6   MR. FISHER, IF YOU COULD PUT UP TRIAL EXHIBIT 95.

11:36:24 7   AND THIS IS -- THIS WAS DEPOSITION EXHIBIT NUMBER 22 --

11:36:29 8 NUMBER 26, AND NOW IT'S BEEN RELABELED AT TRIAL EXHIBIT

11:36:34 9 NUMBER 95. AND IF I CAN GO TO THE FRONT PAGE THERE AND BLOW

11:36:38 10 THAT UP. ACTUALLY, THE NEXT PAGE.

11:36:41 11   THIS IS THE COPY OF THE UNITED STATES PATENT NUMBER

11:36:47 12 7,047,526 DATED MAY 16, 2006. THE TITLE IS "GENERIC COMMAND

11:36:57 13 INTERFACE FOR MULTIPLE EXECUTABLE ROUTINES."

11:37:01 14   THE NAMED INVENTORS ARE JEFFREY WHEELER AND PAUL MUSTOE,

11:37:04 15 AND THE ASSIGNEE IS CISCO TECHNOLOGIES, INC.

11:37:07 16   SO AT THIS TIME I WOULD LIKE TO ADMIT INTO EVIDENCE THE

11:37:09 17 '526 PATENT WHICH IS TRIAL EXHIBIT NUMBER 95.

11:37:13 18   MR. KRISHNAN: NO OBJECTION YOUR HONOR.

11:37:14 19   THE COURT: IT WILL BE ADMITTED.

11:37:17 20   (PLAINTIFF'S EXHIBIT 95 WAS ADMITTED INTO EVIDENCE.)

11:37:17 21   MR. PAK: AND I THINK THAT CONCLUDES MR. WHEELER'S

11:37:19 22 TESTIMONY.

11:37:19 23   THE COURT: OKAY.

11:37:20 24   MR. PAK: AND WE DO HAVE ONE MORE SHORT VIDEO

11:37:23 25 TESTIMONY OF ANOTHER WITNESS. AND CISCO WILL BE CALLING

11:37:28 1   MR. ADAM SWEENEY, WHO IS THE VICE PRESIDENT OF SOFTWARE

11:37:33 2   ENGINEERING AT ARISTA AND WAS A CORPORATE DESIGNEE WITH RESPECT

11:37:38 3   TO THE '526 PATENT, AND WE WILL BE PLAYING CLIPS OF HIS

11:37:42 4   TESTIMONY FROM HIS VIDEO DEPOSITION.

11:37:45 5   THE COURT: OKAY.

11:37:45 6   **(THE VIDEOTAPED DEPOSITION OF ADAM SWEENEY WAS PLAYED INTO**

11:51:19 7   **THE RECORD.)**

11:51:19 8   MR. PAK: SO THAT'S THE END OF THE VIDEO TESTIMONY OF

11:51:22 9   MR. SWEENEY, AND I HAVE A FEW EXHIBITS TO DISCUSS ON THE

11:51:25 10   RECORD.

11:51:25 11   THE COURT: OKAY.

11:51:26 12   MR. PAK: YOUR HONOR, SO DEPOSITION EXHIBIT 121, THAT

11:51:31 13   MR. SWEENEY DISCUSSED CORRESPONDS TO EXHIBIT 463, WHICH I

11:51:34 14   BELIEVE HAS ALREADY BEEN ADMITTED.

11:51:37 15   DEPOSITION EXHIBIT 122 CORRESPONDS TO EXHIBIT 464, WHICH

11:51:43 16   HAS BEEN ADMITTED.

11:51:44 17   DEPOSITION EXHIBIT 123 CORRESPONDS TO TRIAL EXHIBIT 3241,

11:51:51 18   WHICH HAS BEEN ADMITTED.

11:51:56 19   DEPOSITION EXHIBIT 124 CORRESPONDS TO TRIAL EXHIBIT 295

11:52:01 20   WHICH HAS BEEN ADMITTED.

11:52:02 21   AND DEPOSITION EXHIBIT 133 CORRESPONDS TO TRIAL

11:52:05 22   EXHIBIT 473, WHICH I BELIEVE HAS BEEN ADMITTED AS WELL.

11:52:11 23   THE COURT: ARE ALL OF THOSE ADMITTED? YES, THEY ARE

11:52:14 24   ALL PREVIOUSLY ADMITTED.

11:52:16 25   MR. PAK: AND I JUST HAVE ONE EXHIBIT TO ADMIT,

11:52:18	1	YOUR HONOR, AND THAT IS THE DRAWING THAT WE SAW IN THE VIDEO
11:52:22	2	TESTIMONY WHICH WAS LABELED DEPOSITION EXHIBIT 674. AND IF WE
11:52:28	3	SEE THAT -- YOU CAN SEE THE LABEL ON THE BOTTOM, THAT'S BEEN
11:52:32	4	NOW RELABELED AS TRIAL EXHIBIT 489.
11:52:36	5	AND WE WILL BE OFFERING THAT INTO EVIDENCE, YOUR HONOR.
11:52:40	6	THE COURT: ANY OBJECTION?
11:52:41	7	MR. KRISHNAN: NO OBJECTION, YOUR HONOR.
11:52:42	8	THE COURT: IT WILL BE ADMITTED.
11:52:43	9	(PLAINTIFF'S EXHIBIT 489 WAS ADMITTED INTO EVIDENCE.)
11:52:43	10	MR. PAK: AND I THINK THAT CONCLUDES MR. SWEENEY FOR
11:52:47	11	NOW.
11:52:48	12	THE COURT: OKAY.
11:52:48	13	MR. PAK: AND WE HAVE A LIVE WITNESS. WE CAN EITHER
11:52:51	14	START WITH DR. JEFFAY --
11:52:52	15	THE COURT: DO YOU WANT TO JUST DO SOME INTRODUCTORY,
11:52:54	16	AND THEN WE CAN STOP?
11:52:55	17	MR. PAK: SURE. ABSOLUTELY. WHY DON'T WE DO THAT.
11:53:01	18	SO CISCO CALLS DR. KEVIN JEFFAY TO THE WITNESS IS STAND.
11:53:07	19	THE COURT: DR. JEFFAY, IF YOU WOULD COME FORWARD TO
11:53:09	20	THE WITNESS STAND PLEASE AND STAND TO BE SWORN.
11:53:25	21	(**PLAINTIFF'S WITNESS, DR. KEVIN JEFFAY, WAS SWORN.**)
11:53:27	22	THE WITNESS: YES, I DO.
11:53:29	23	THE CLERK: THANK YOU. PLEASE BE SEATED.
11:53:32	24	IF YOU WOULD PLEASE STATE YOUR NAME AND SPELL YOUR LAST
11:53:34	25	NAME.

11:53:34 1   THE WITNESS: MY NAME IS KEVIN JAFFE. AND THE LAST

11:53:38 2   NAME IS J-E-F-F-A-Y.

11:53:43 3   **DIRECT EXAMINATION**

11:53:43 4   BY MR. PAK:

11:53:44 5   Q.   GOOD MORNING, DR. JEFFAY.

11:53:45 6   A.   COOD MORNING.

11:53:45 7   Q.   CAN YOU BRIEFLY INTRODUCE YOURSELF TO THE JURY?

11:53:47 8   A.   SO YOU KNOW MY NAME. I AM A PROFESSOR OF COMPUTER SCIENCE

11:53:51 9   IN THE DEPARTMENT OF COMPUTER SCIENCE AT THE UNIVERSITY OF

11:53:52 10   NORTH CAROLINA AT CHAPEL HILL.

11:53:54 11   Q.   GREAT. AND HAVE YOU PREPARED SOME SLIDES TO HELP US WITH

11:54:00 12   YOUR TESTIMONY TODAY?

11:54:00 13   A.   YES.

11:54:01 14   MR. PAK: MR. FISHER IF WE COULD GET SLIDE NUMBER 2.

11:54:05 15   Q.   AGAIN, IF YOU COULD SUMMARIZE FOR US YOUR PROFESSIONAL

11:54:08 16   EXPERTISE THAT ARE RELEVANT TO THE '526 PATENT, PARTICULARLY

11:54:12 17   ANY APPOINTMENTS OR EDUCATIONAL BACKGROUND THAT YOU HAVE THAT

11:54:16 18   MIGHT BE RELEVANT?

11:54:17 19   A.   SURE.

11:54:17 20   I STARTED OUT -- LET ME START WITH MY EDUCATION. I

11:54:20 21   STARTED OUT STUDYING MATHEMATICS AND I STUDIED MATHEMATICS AT

11:54:23 22   THE UNIVERSITY OF ILLINOIS.

11:54:25 23   I WENT TO GRADUATE SCHOOL THEN TO STUDY COMPUTER SCIENCE

11:54:28 24   AND DID SO FIRST AT THE UNIVERSITY OF TORONTO. AND THEN I WENT

11:54:34 25   ON AND DID A PHD AT THE UNIVERSITY OF WASHINGTON.

11:54:37 1   AND UPON COMPLETING THE DEGREE THERE, I JOINED THE FACULTY

11:54:42 2   AT UNC, AND SO I HAVE BEEN THERE SINCE 1989.

11:54:45 3   I CURRENTLY HOLD POSITION OF THE GILLIAN CELL

11:54:47 4   DISTINGUISHED PROFESSOR OF COMPUTER SCIENCE, AND

11:54:49 5   ADMINISTRATIVELY I SERVE AS THE CHAIRMAN.

11:54:52 6   I'VE HAD SOME APPOINTMENTS OUTSIDE OF THE UNIVERSITY FROM

11:54:55 7   THE 80'S AND EARLY 90'S AND SOME OF THEM ARE LISTED HERE. MOST

11:55:02 8   OF THESE ARE RELEVANT ONE WAY OR ANOTHER TO THE ANALYSIS WE ARE

11:55:06 9   GOING TO TALK ABOUT HERE.

11:55:07 10   I'M PRIMARILY A NETWORKING AND OPERATING SYSTEMS

11:55:11 11   RESEARCHER AND HAVE DEVELOPED OPERATING SYSTEMS AND

11:55:13 12   COMMAND-LINE INTERFACES FOR OPERATING SYSTEMS.

11:55:15 13   THE MOST INTERESTING EXAMPLE IS THE ONE FROM A WHILE AGO

11:55:19 14   WHEN I WORKED FOR BOEING AEROSPACE. I WORKED ON AN OPERATING

11:55:23 15   SYSTEM THAT WAS FOR A FLIGHT CONTROL COMPUTER THAT WAS SUPPOSED

11:55:26 16   TO GO ON THE INTERNATIONAL SPACE STATION. AND I HAVE ALSO DONE

11:55:31 17   OS RELATED WORK WITH IBM.

11:55:33 18   Q.   THANK YOU, DR. JEFFAY.

11:55:35 19   SO GOING TO THE NEXT SLIDE IN YOUR PRESENTATION, AGAIN, IF

11:55:38 20   YOU COULD SUMMARIZE SOME OF THE PROFESSIONAL ASSOCIATIONS THAT

11:55:41 21   YOU HAVE AND AWARDS AND HONORS THAT YOU RECEIVE THAT PERTAIN TO

11:55:45 22   THE SUBJECT MATTER OF THE '526 PATENT?

11:55:47 23   A.   SURE.

11:55:48 24   I HAVE BEEN A MEMBER OF THE TWO LEADING PROFESSIONAL

11:55:50 25   SOCIETIES FOR COMPUTER SCIENCE. THESE ARE WHAT'S CALLED THE

11:55:54   1   ACM, THE ASSOCIATION OF COMPUTING MACHINERY, AND THE IEEE.

11:55:59   2   I RUN A LARGE NETWORKING LAB AT THE UNIVERSITY OF NORTH

11:56:02   3   CAROLINA. MY STUDENTS AND I HAVE WRITTEN LOTS OF PAPERS, AND

11:56:07   4   SEVERAL PIECES OF THE RESEARCH THAT THE STUDENTS HAVE DONE HAVE

11:56:10   5   WON SOME PRESTIGIOUS AWARDS BY THESE AFOREMENTIONED

11:56:15   6   PROFESSIONAL SOCIETIES.

11:56:16   7   Q.   OKAY.

11:56:17   8   MR. PAK: AND AT THIS TIME, YOUR HONOR, I WOULD LIKE

11:56:19   9   TO TENDER DR. JEFFAY AS AN EXPERT IN THE FIELD OF NETWORKING

11:56:22   10   AND COMPUTER SCIENCE.

11:56:24   11   THE COURT: ANY OBJECTION?

11:56:25   12   MR. KRISHNAN: NO OBJECTION, YOUR HONOR.

11:56:26   13   THE COURT: ALL RIGHT. HE MAY TESTIFY AS AN EXPERT

11:56:29   14   IN THAT FIELD.

11:56:29   15   BY MR. PAK:

11:56:29   16   Q.   DR. JEFFAY, GOING TO THE SPECIFIC ASSIGNMENTS THAT YOU

11:56:32   17   WERE ASKED TO DO IN THIS CASE, CAN YOU SUMMARIZE THE TASKS THAT

11:56:35   18   WERE ASKED OF YOU WITH RESPECT TO THIS CASE?

11:56:38   19   A.   SURE. THERE'S TWO PRIMARY TASKS. THEY WERE TO REVIEW

11:56:42   20   THIS PATENT THAT WE'VE COME TO KNOW AS THE '526 PATENT AND

11:56:46   21   DETERMINE WHETHER OR NOT PRODUCTS MADE BY ARISTA INFRINGE

11:56:49   22   CLAIMS 1 AND 14 OF CISCO'S PATENT.

11:56:52   23   AND THEN IN ADDITION, I WAS ASKED TO DO A SIMILAR ANALYSIS

11:56:55   24   FOR PRODUCTS MADE BY CISCO, AND THESE ARE THE CISCO IOS XR

11:57:00   25   PRODUCTS.

11:57:00   1   Q.   OKAY. AND I THINK THE JURORS HAVE HEARD SOME PATENT

11:57:04   2   VIDEOS AND ALSO HEARD SOME JURY INSTRUCTIONS ABOUT THE VALIDITY

11:57:08   3   OF PATENTS.

11:57:10   4   IS THE VALIDITY OF THE '526 PATENT NO LONGER -- IS THAT

11:57:14   5   BEING CHALLENGED BY ARISTA AS PART OF THIS TRIAL?

11:57:17   6   A.   SO MY UNDERSTANDING IS THAT IT'S NOT BEING CHALLENGED.

11:57:21   7   Q.   SO WE ARE HERE TO JUST TALK ABOUT INFRINGEMENT ISSUES IN

11:57:24   8   THIS CASE, CORRECT?

11:57:24   9   A.   THAT'S MY UNDERSTANDING.

11:57:25   10   Q.   AND SO IF WE CAN TURN TO THE NEXT SLIDE.

11:57:29   11   DR. JEFFAY, CAN YOU SUMMARIZE FOR US THE TYPES OF EVIDENCE

11:57:32   12   THAT YOU CONSIDERED AS YOU THOUGHT ABOUT THE QUESTIONS OF

11:57:36   13   INFRINGEMENT RELATED TO THIS PATENT?

11:57:37   14   A.   SURE.

11:57:38   15   SO I REVIEWED QUITE A LARGE BODY OF EVIDENCE. MOSTLY

11:57:43   16   DOCUMENTS AND THE DOCUMENTS WERE PRODUCED HERE. AND A LOT OF

11:57:47   17   THE COMPUTER SOURCE CODE, BOTH FOR THE ARISTA PRODUCTS AND THE

11:57:50   18   CISCO IOS XR PRODUCTS.

11:57:55   19   IN ADDITION, I'VE HAD SOME CONVERSATIONS WITH CISCO

11:57:59   20   EMPLOYEES WHO WERE KNOWLEDGEABLE ABOUT THE OPERATION OF THE IOS

11:58:01   21   XR PRODUCTS.

11:58:02   22   Q.   AND HAVE YOU HAD A CHANCE TO EITHER HEAR OR REVIEW SOME OF

11:58:06   23   THE TRIAL TESTIMONY THAT WE'VE HEARD IN THIS CASE?

11:58:07   24   A.   YES.

11:58:08   25   Q.   AND WERE YOU IN THE ROOM WHEN WE PLAYED THE VIDEO CLIPS OF

11:58:11   1   MR. SWEENEY AND MR. WHEELER?

11:58:13   2   A.   YES.

11:58:13   3   Q.   OKAY. AND I WANT TO FOCUS ON THE THIRD TO THE BOTTOM

11:58:18   4   LISTING HERE, CISCO AND CISCO SOURCE CODE. WHY WERE YOU

11:58:21   5   LOOKING AT THE SOURCE CODE OF BOTH COMPANIES WITH RESPECT TO

11:58:24   6   THIS CASE?

11:58:25   7   A.   WELL, WHAT WE ARE GOING TO SEE IS THAT THE PATENT IS --

11:58:28   8   CLAIM 1 OF THE PATENT, FOR EXAMPLE, IS ABOUT A METHOD. SO

11:58:31   9   THIS -- THIS IS REFERRING TO WHAT'S ACTUALLY HAPPENING INSIDE

11:58:34   10   THE DEVICE. AND SO YOU CAN'T REALLY SEE WHAT'S HAPPENING

11:58:37   11   INSIDE THE DEVICE BY LOOKING AT IT.

11:58:40   12   SO TO UNDERSTAND WHAT'S ACTUALLY HAPPENING INSIDE THE

11:58:42   13   DEVICE, YOU HAVE TO LOOK AT THE COMPUTER SOURCE CODE FOR THE

11:58:46   14   DEVICE BECAUSE THAT'S ULTIMATELY WHAT CONTROLS THE DEVICE.

11:58:50   15   Q.   AND JUST FLIPPING THROUGH TO SLIDE 7, JUST TO REMIND THE

11:58:54   16   JURY THIS IS THE '526 PATENT, THAT'S THE PATENT FOR WHICH

11:58:58   17   MR. WHEELER AND MR. MUS TOW WERE THE NAMED INVENTORS; IS THAT

11:59:02   18   CORRECT?

11:59:02   19   A.   THAT'S CORRECT.

11:59:03   20   Q.   AND THIS PATENT WAS FILED ON JUNE 28TH, 2000; IS THAT

11:59:07   21   RIGHT?

11:59:07   22   A.   YES, THAT'S CORRECT.

11:59:12   23   MR. PAK: AND SO -- WE COULD EITHER BREAK NOW,

11:59:15   24   YOUR HONOR.

11:59:15   25   THE COURT: THAT WOULD BE GOOD.

11:59:16 1   ALL RIGHT. WE ARE GOING TO TAKE OUR HUNCH BREAK. LET'S

11:59:19 2   COME BACK AT 1:00. I WILL SEE YOU ALL THEN.

12:00:08 3   (RECESS FROM 12:00 P.M. UNTIL 1:04 P.M.)

12:00:08 4   **AFTERNOON SESSION.**

01:04:34 5   (JURY IN AT 1:04 P.M.)

01:04:34 6   THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE

01:04:36 7   SEATED.

01:04:38 8   WE WILL GET STARTED WHERE WE LEFT OFF. DR. JEFFAY HAS

01:04:42 9   JOINED US ON THE STAND. MR. PAK, YOU MAY CONTINUE.

01:04:44 10   MR. PAK: THANK YOU SO MUCH YOUR HONOR.

01:04:46 11   Q.   WELCOME BACK, DR. JEFFAY.

01:04:48 12   A.   WELCOME.

01:04:48 13   Q.   WE WERE JUST ON SLIDE 7, AND YOU HAD INTRODUCED US TO THE

01:04:52 14   '526 PATENT, WHICH WAS FILED IN JUNE OF 2000.

01:04:56 15   AND, DR. JEFFAY, WHY DON'T YOU, WITH SLIDE 8, WALK US

01:05:00 16   THROUGH WHAT THIS PATENT IS ABOUT AT A HIGH LEVEL?

01:05:03 17   A.   SURE.

01:05:04 18   SO WE HEARD MR. WHEELER, ONE OF THE INVENTORS, TALK A

01:05:08 19   LITTLE BIT ABOUT THIS, THAT THE PATENT WAS MOTIVATED BY

01:05:13 20   ENVIRONMENT WHERE COMPUTING DEVICES WOULD HAVE LARGE NETWORK

01:05:16 21   TOOLS THEY WOULD USE TO IMPLEMENT THEIR FUNCTIONS, AND YOU CAN

01:05:19 22   THINK OF THESE TOOLS LIKE SORT OF BACKEND COMPONENTS.

01:05:22 23   AND THE PROBLEM WAS THAT EACH TOOL HAD ITS OWN SPECIFIC

01:05:26 24   USER INTERFACE, ITS OWN COMMAND SYNTAX. AND TO USE THE SYSTEM

01:05:31 25   EFFECTIVELY, THE USER HAD TO MEMORIZE A WHOLE PILE OF COMMAND

01:05:35   1   SETS.

01:05:36   2   AND SO WHAT THE PATENT IS ABOUT IS TRYING TO UNIFY ALL OF

01:05:40   3   THESE TOOL SYNTAXES INTO A COMMON ONE AND THEN PRESENT ONE

01:05:45   4   SINGLE INTERFACE TO THE USER THAT HOPEFULLY IS SIMPLER TO USE

01:05:50   5   AND HIDE THE FACT FROM THEM THAT THE REAL COMMANDS THAT ARE

01:05:54   6   ACTUALLY BEING EXECUTED ARE VERY DIFFERENT AND MAKES MORE

01:05:58   7   ARCANE.

01:05:58   8   Q.   AND WHY WOULD THESE TOOLS HAVE DIFFERENT TYPES OF USER

01:06:01   9   INTERFACES?

01:06:01   10   A.   I MEAN, THERE WOULD BE LOTS OF REASONS BUT TYPICALLY THEY

01:06:04   11   MAY BE DEVELOPED BY DIFFERENT INDIVIDUALS, MAYBE DIFFERENT

01:06:06   12   THIRD PARTIES, AND EACH OF THOSE INDIVIDUALS AND THIRD PARTIES

01:06:10   13   IS GOING TO MAKE THEIR OWN CHOICES AS TO HOW THEY DESIGN THE

01:06:14   14   USER INTERFACE, HOW TO DESIGN THE COMMAND SYNTAX, AND THERE'S

01:06:17   15   NO REASON TO BELIEVE THEY WILL COME UP WITH THE SAME OR SIMILAR

01:06:21   16   SYNTAX.

01:06:22   17   Q.   OKAY. YOU NEED TO SLOW DOWN A LITTLE BIT.

01:06:25   18   A.   OH, SORRY.

01:06:26   19   Q.   SO WHAT HAPPENS WHEN YOU START ADDING MORE AND MORE TOOLS

01:06:31   20   AND EACH OF THEM HAVE THEIR OWN DIFFERENT USER INTERFACES?

01:06:33   21   A.   THE USER HAS TO LEARN NEW COMMAND SYNTAXES AND THEY MAY BE

01:06:39   22   DIFFERENT OR INCOMPATIBLE. SO THE PATENT IS INPUTTING A COMMON

01:06:44   23   SYNTAX ACROSS ALL OF THEM.

01:06:45   24   Q.   OKAY. SO LET'S TAKE A LOOK AT THE PATENT, AND THIS IS

01:06:48   25   FIGURE 1 OF THE '526 PATENT. CAN YOU WALK US THROUGH WHAT WE

01:06:53   1   ARE SEEING WITH THIS FIGURE.

01:06:56   2   AND BEFORE WE DO THAT, DR. JEFFAY, WE ARE GOING TO SHOW

01:06:57   3   SOME FIGURES WITH THE PATENT, I THINK YOU ARE GOING TO USE --

01:07:00   4   YOU'VE USED THE WORD "EMBODIMENT." CAN YOU TELL THE JURY WHAT

01:07:04   5   FIGURES AND EMBODIMENTS MEAN IN THE CONTEXT OF A PATENT?

01:07:09   6   A.   SURE. SO THE WAY YOU THINK ABOUT FIGURES ARE, THEY ARE

01:07:12   7   JUST ILLUSTRATIVE. THEY ARE JUST TRYING TO SHOW AN EXAMPLE OF

01:07:15   8   WHAT THE PATENT IS BUT THEY DON'T ACTUALLY DEFINE WHAT THE

01:07:18   9   INVENTION IS. THAT'S GOING TO BE SOMETHING THROUGH WHAT'S

01:07:21 10   CALLED THE CLAIMS THAT WE WILL SEE IN JUST A LITTLE BIT.

01:07:23 11   Q.   SO COULD YOU WALK US THROUGH THIS PARTICULAR EXAMPLE OF

01:07:26 12   FIGURE 1 FROM THE '526 PATENT?

01:07:27 13   A.   SURE. SO THINK OF THIS AS THE USER IS ON THE LEFT-HAND

01:07:31 14   SIDE OF THE PICTURE, TYPING IN THE USER INTERFACE. AND WE HAVE

01:07:36 15   THIS MANAGEMENT.

01:07:38 16   Q.   I'M GOING TO ASK YOU, DR. JEFFAY, TO SLOW DOWN A LITTLE

01:07:43 17   BIT.

01:07:43 18   A.   SO THE USER IS ON THE LEFT-HAND SIDE OF THE PICTURE, AND

01:07:46 19   THEY WILL BE ENTERING DOWN COMMANDS.

01:07:48 20   ON THE RIGHT-HAND SIDE OF THE PICTURE WE HAVE WHAT'S

01:07:50 21   CALLED MANAGEMENT PROGRAMS, AND THESE ARE THE TOOLS THAT WERE

01:07:54 22   REFERRED TO EARLIER.

01:07:56 23   AND THE COMPONENTS OF THE INVENTION ARE GOING TO INCLUDE A

01:08:00 24   PARSER WHICH IS THE BLUE BOX, 14. AND WHAT THE PARSER IS GOING

01:08:04 25   TO DO IS TRY AND UNDERSTAND, IT'S GOING TO TAKE THE TEXT INPUT

01:08:07 1   BY THE USER AND TRY TO UNDERSTAND WHAT IT IS, WHAT SO CALLED

01:08:11 2   GENERIC COMMAND HAS BEEN INPUT.

01:08:14 3   AND ONCE IT'S IDENTIFIED A COMMAND, IT'S GOING TO

01:08:17 4   TRANSLATE THAT COMMAND INTO THE SPECIFIC SYNTAX OF THE TOOL

01:08:21 5   THAT'S GOING TO EXECUTE THAT COMMAND.

01:08:22 6   SO THE MANAGEMENT PROGRAMS ON THE RIGHT, ALL THE BOXES

01:08:26 7   LABELED 18, THE IDEA IS EACH ONE OF THOSE HAS ITS OWN UNIQUE

01:08:31 8   USER INTERFACE.

01:08:32 9   AND THERE'S A COMMON INTERFACE THAT IS PRESENTED TO THE

01:08:35 10   USER, THE USER IS GOING TO ENTER IN THE COMMON COMMANDS, THE

01:08:39 11   PARSER IS GOING TO FIGURE OUT WHAT THEY ARE, TRANSLATE THEM AND

01:08:43 12   THEN GENERATE THE SPECIFIC COMMAND FOR THE SPECIFIC MANAGEMENT

01:08:46 13   PROGRAM.

01:08:46 14   Q.   AND LOOKING AT THESE BOXES 18A, B, C, AND ON THE

01:08:52 15   RIGHT-HAND SIDE, THESE ARE THE MANAGEMENT PROGRAMS OR TOOLS

01:08:55 16   THAT YOU TALKED ABOUT; IS THAT RIGHT?

01:08:57 17   A.   CORRECT.

01:08:58 18   Q.   AND SO, DR. JEFFAY, THEY COULD EVEN HAVE DIFFERENT USER

01:09:02 19   INTERFACES.

01:09:03 20   CAN THESE MANAGEMENT PROGRAMS OR TOOLS HAVE DIFFERENT USER

01:09:07 21   INTERFACES FOR THE SAME OR SIMILAR FUNCTIONS?

01:09:10 22   A.   YES. I THINK WE SHOULD THINK ABOUT THEM AS THEY ARE

01:09:13 23   INDEPENDENT. SO THEY ARE INDEPENDENTLY DESIGNED, AND,

01:09:15 24   THEREFORE, THEY CAN HAVE DIFFERENT SYNTAX OR EVEN COMMON OR

01:09:18 25   EVEN SIMILAR OPERATIONS.

01:09:20   1   Q.   OKAY. SO LET'S TAKE A LOOK AT ANOTHER EXEMPLARY FIGURE OR

01:09:24   2   EXAMPLE FIGURE. THIS IS FIGURE 2 OF THE PATENT. AND CAN YOU

01:09:28   3   HELP US UNDERSTAND WHAT'S BEING DEPICTED ON THIS FIGURE?

01:09:32   4   A.   SURE. SO THIS IS A VERY BUSY FIGURE BECAUSE IT HAS ALL

01:09:36   5   THESE NUMBERS AND LABELS. BUT IF YOU JUST FOCUS ON THE BOXES

01:09:40   6   AND THE ARROWS, WHAT THIS IS TRYING TO REPRESENT IS WHAT WE

01:09:43   7   CALL A TREE. IN THIS CASE IT'S A PARSE TREE.

01:09:45   8   AND THIS ONE, SPECIFIC ONE IS CALLED COMMAND PARSE TREE.

01:09:49   9   AND IN COMPUTER SCIENCE WHEN WE USE THE WORD TREE, THINK OF IT

01:09:53 10   LIKE A FAMILY TREE. YOU HAVE ANCESTORS AT THE TOP OF THE TREE

01:09:57 11   AND NEWER GENERATIONS AS YOU GO DOWN THE TREE. SO THIS IS AN

01:09:59 12   EXAMPLE, AS I SAY, OF WHAT THE PATENT IS GOING TO CALL A

01:10:02 13   COMMAND PARSE TREE.

01:10:03 14   SO THIS IS THE STRUCTURE THAT'S USED TO DETERMINE WHAT A

01:10:07 15   COMMAND THAT'S TYPED IN BY THE USER IS. YOU WILL TAKE, SAY, A

01:10:11 16   FIRST WORD AND AT THE FIRST LEVEL FIGURE OUT WHAT THAT WORD IS.

01:10:15 17   ONCE YOU'VE IDENTIFIED THAT WORD, YOU WILL THEN BRANCH TO

01:10:18 18   THE APPROPRIATE SECOND LEVEL TO MAYBE START TRYING TO

01:10:20 19   UNDERSTAND WHAT THE SECOND WORD IS AND YOU WORK YOUR WAY DOWN

01:10:24 20   THE TREE. AND WE'VE MADE IT TO THE BOTTOM OF THE TREE. THAT

01:10:28 21   MEANS YOU'VE SUCCESSFULLY IDENTIFIED WHAT A COMMAND IS AND HOW

01:10:31 22   YOU ARE ABLE TO TRANSLATE THAT COMMAND.

01:10:32 23   Q.   I THINK WE HAVE A SPECIFIC EXAMPLE I WANT TO WALK THE

01:10:37 24   THROUGH JURY TO ILLUSTRATE THAT. BUT JUST TO MAKE SURE WE HAVE

01:10:41 25   THIS CONCEPT RIGHT, THERE'S A BOX AT THE TOP THAT SAYS ROOT.

01:10:45 1   THAT'S THE BEGINNING OF THE TREE STRUCTURE?

01:10:48 2   A.   CORRECT.

01:10:49 3   Q.   AND THERE'S A BOX LABELED 24A. THAT'S THE FIRST BOX AFTER

01:10:52 4   THE ARROW FROM THE ROOT; CORRECT?

01:10:54 5   A.   CORRECT.

01:10:55 6   Q.   SO WOULD THAT -- HOW WOULD YOU DESCRIBE THAT IN THE

01:10:57 7   CONTEXT OF THE TREE?

01:10:59 8   A.   SO THIS WOULD BE THE FIRST ELEMENT OF THE PARSE. THIS

01:11:04 9   WOULD BE THE BOX THAT'S GOING TO IDENTIFY, FOR EXAMPLE, THE

01:11:07 10   FIRST WORD IN A COMMAND THAT'S TYPED IN BY THE USER.

01:11:10 11   Q.   AND WOULD IT BE ACCURATE TO SAY THAT'S A PARENT IN A

01:11:13 12   PARTICULAR TREE?

01:11:14 13   A.   SURE. PARENT WOULD BE FINE.

01:11:17 14   Q.   OKAY. AND THEN IF WE GO TO THE NEXT LEVEL AS WE SEE THREE

01:11:21 15   DIFFERENT ARROWS COMING OUT OF THAT BOX AND THEN THERE ARE

01:11:26 16   THREE SEPARATE BOXES AT THE SECOND LEVEL OF THE TREE, USING

01:11:28 17   THAT PARENT ANALOGY, HOW WOULD YOU DESCRIBE THAT LEVEL?

01:11:31 18   A.   SO IF 24A, THE TOP LEVEL, IS A PARENT, THEN WE WOULD SAY

01:11:35 19   THE SECOND LEVEL, THESE ARE THE CHILDREN OR THE CHILD. AND SO

01:11:38 20   THERE'S THREE POSSIBILITIES AT THE FIRST NODE FOR OUR FIRST

01:11:44 21   WORD, AND, THEREFORE, THERE'S THREE CHILDREN THAT COME OUT OF

01:11:47 22   THE FIRST NODE.

01:11:47 23   Q.   AND THEN JUST TO CLOSE OUT THE ANALOGY, IF WE GO TO THE

01:11:50 24   NEXT LEVEL DOWN, 24C BOX, WHAT WOULD BE THE RIGHT LABEL FOR

01:11:55 25   THESE ELEMENTS IN THE TREE HIERARCHY?

01:11:58 1   A.   SO NOW WHEN WE'RE AT THE THIRD LEVEL DOWN, 24C, THESE

01:12:02 2   RELATIVE TO THE PARENTS, THESE WOULD BE THE GRAND KIDS, THE

01:12:07 3   GRAND CHILD OF THE PARENT. AND THIS WOULD THEN BE THE THIRD

01:12:11 4   LEVEL OF THE PARSE.

01:12:12 5   Q.   OKAY. SO LET'S TAKE A LOOK AT A SPECIFIC EXAMPLE THAT

01:12:15 6   COMES OUT OF THE PATENT ITSELF TO SEE HOW THIS WORKS.

01:12:18 7   AND, AGAIN, JUST TO MAKE SURE THIS IS AN EXAMPLE OF WHAT

01:12:22 8   WE ARE LOOKING AT IN THE INVENTION; CORRECT?

01:12:24 9   A.   CORRECT, THIS IS JUST AN EXAMPLE.

01:12:26 10   Q.   SO WHAT ARE WE LOOKING AT HERE, WHAT ARE WE SHOWING?

01:12:29 11   A.   SO WE ARE GOING TO LOOK AT THE USER ON THE UPPER LEFT,

01:12:32 12   HE'S GOING TO TYPE IN A COMMAND, AND WE ARE GOING TO TRY TO

01:12:36 13   ILLUSTRATE HOW THE PATENT TEACHES IN THIS PARTICULAR EXAMPLE,

01:12:38 14   PARSING WOULD OCCUR.

01:12:40 15   SO THE USER, FOR EXAMPLE, MIGHT TYPE IN A FIRST WORD THAT

01:12:44 16   WOULD BE WATCH. AND THE PARSER WOULD, AT ITS FIRST LEVEL, TRY

01:12:48 17   AND IDENTIFY THAT WORD. AND IT'S, SAY, IN THIS CASE IT IS ABLE

01:12:53 18   TO IDENTIFY IT SO NOW YOU MOVE TO THE SECOND LEVEL AND NOW

01:12:57 19   ATTEMPT TO PROCESS THE SECOND WORD WHICH IN THIS CASE IS THE

01:12:59 20   WORD TCP. AND IN THIS CASE IT WILL SUCCESSFULLY IDENTIFY THAT

01:13:03 21   WORD. AND THEN IT WOULD MOVE ON TO THE NEXT WORD IN THE

01:13:06 22   COMMAND WHICH IS CALLED CONNECTIONS.

01:13:11 23   AND IF THAT WAS A SUCCESSFUL MATCH AT THE THIRD LEVEL, AT

01:13:14 24   THIS POINT THE PARSER WOULD HAVE SUCCESSFULLY RECOGNIZED THE

01:13:17 25   COMMAND WATCH TCP CONNECTIONS, WOULD TRANSLATE IT INTO WHAT'S

01:13:20 1   CALLED A PRESCRIBED COMMAND.

01:13:22 2   Q.   AND DOES THIS PARTICULAR MULTIWORD COMMAND WATCH TCP

01:13:26 3   CONNECTIONS APPEAR IN THE '526 PATENT?

01:13:29 4   A.   YES, THIS IS A SPECIFIC EXAMPLE THAT'S IN THE PATENT.

01:13:32 5   Q.   AND WHAT WOULD HAPPEN IF SOMEBODY USED DIFFERENT WORDS

01:13:35 6   THAN WATCH TCP AND CONNECTIONS, HOW WOULD THAT AFFECT THE PARSE

01:13:40 7   TREE?

01:13:40 8   A.   IF YOU ARE ASKING IF THEY TYPED IN A DIFFERENT COMMAND OR

01:13:44 9   THEY USED DIFFERENT WORDS INSTEAD OF WATCH.

01:13:46 10   Q.   LET'S TAKE BOTH OF THOSE EXAMPLES. IF I TYPED IN A

01:13:50 11   DIFFERENT SET OF WORDS BECAUSE I FORGOT THE COMMAND WATCH TCP

01:13:55 12   CONNECTIONS, SO IF I TYPED IN A DIFFERENT SET OF WORDS FOR THIS

01:13:58 13   PARTICULAR PARSER, WHAT WOULD HAPPEN?

01:14:00 14   A.   SO IF THE WORDS YOU TYPE IN WERE NOT KNOWN TO THE PARSER

01:14:04 15   IT WOULD ULTIMATE GENERATE AN ERROR.

01:14:05 16   Q.   AND THEN WHAT IF THE COMMAND DESIGNER, THE PERSON WHO CAME

01:14:09 17   UP WITH THIS PARTICULAR COMMAND DECIDED TO USE DIFFERENT WORDS

01:14:12 18   THAN WATCH TCP CONNECTIONS, HOW WOULD THE PARSE TREE CHANGE IN

01:14:16 19   THAT INSTANCE?

01:14:17 20   A.   THE PARSE TREE WOULD STRUCTURALLY LOOK THE SAME, THE ONLY

01:14:20 21   DIFFERENCE IS WHAT ARE CALLED THE TOKENS WHICH IS THE PARSING

01:14:25 22   WORD FOR A WORD. THE TOKENS YOU WOULD BE LOOKING FOR WOULD BE

01:14:28 23   DIFFERENT.

01:14:28 24   Q.   CAN YOU GIVE US EXAMPLES OF DIFFERENT TYPES OF TOKENS THAT

01:14:32 25   CAN BE USED HERE?

01:14:33   1   A.   THE PERSON WHO DESIGNS THE INTERFACE IS FREE TO USE

01:14:36   2   WHATEVER WORDS THEY WANT. SO INSTEAD OF WATCH THEY COULD HAVE

01:14:39   3   USED SHOW. INSTEAD OF TCP THEY COULD HAVE SAID TCP IP OR

01:14:44   4   SOMETHING LIKE THAT.

01:14:45   5   Q.   AND THEN WHAT YOU WOULD DO IS WHATEVER WORDS WERE CHOSEN

01:14:49   6   BY THE COMMAND DESIGNER YOU WOULD JUST REPROGRAM THE PARSE TREE

01:14:52   7   TO RECOGNIZE THOSE SPECIFIC WORDS IN A PARTICULAR SEQUENCE?

01:14:55   8   A.   EXACTLY RIGHT.

01:14:55   9   Q.   SO LET'S LOOK AT SOME EXAMPLES THAT ARE GIVEN IN THE

01:14:59 10   PATENT?

01:15:00 11   MR. PAK: AND IF I COULD PULL UP, MR. FISHER, THE

01:15:03 12   '526 PATENT APPENDIX PART A.

01:15:16 13   Q.   THIS IS PART OF THE PATENT EXCLUSION; IS THAT CORRECT?

01:15:20 14   A.   THAT'S CORRECT, THIS IS FROM THE APPENDIX.

01:15:23 15   Q.   CAN YOU DESCRIBE FOR US WHAT WE ARE SEEING IN THE THREE

01:15:25 16   COLUMNS, FUNCTIONAL ITEM, USE SYNTAX AND THEN OLD COMMAND LINE

01:15:29 17   SYNTAX?

01:15:29 18   A.   SURE. SO THIS WAS A TABLE THAT THE INVENTORS PUT IN TO

01:15:32 19   HELP EXPLAIN THE INVENTIONS, AND IT'S DOING IT BY SHOWING

01:15:35 20   EXAMPLES OF WHAT ARE CALLED UPON GENERIC COMMANDS.

01:15:40 21   SO THE FIRST COLUMN IS JUST AN ENGLISH DESCRIPTION THAT

01:15:43 22   MAY NOT MAKE A LOT OF SENSE TO A LOT OF PEOPLE IN THE ROOM, BUT

01:15:46 23   IT'S SORT OF A TECHNICAL DESCRIPTION OF WHAT A PARTICULAR

01:15:48 24   COMMAND IS.

01:15:49 25   AND THEN IN THE MIDDLE COLUMN WE HAVE THE NEW MORE

01:15:53 1   INTEGRATED SYNTAX. AND ON THE RIGHT-HAND COLUMN YOU HAVE THE

01:15:57 2   OLDER SYNTAX.

01:15:58 3   SO THE IDEA IS THAT THE RIGHT-HAND COLUMN, THAT MIGHT BE

01:16:01 4   THE SYNTAX THAT THE SPECIFIC TOOL USED. AND WE'VE TRIED, THE

01:16:05 5   INVENTORS HAVE TRIED TO UNIFY THE SYNTAX ACROSS ALL THE TOOLS

01:16:10 6   BY GENERATING THE NEW SYNTAX IN THE MIDDLE COLUMN.

01:16:12 7   AND AS YOU CAN SEE IT SORT OF SIMPLIFIES, UNIFIES AND

01:16:16 8   SIMPLIFIES THE TOOL SYNTAX.

01:16:18 9   Q.   SO I WANT TO FOCUS ON TWO EXAMPLES. THE ONE IS THE SECOND

01:16:22 10   ROW IN THIS TABLE, OR ACTUALLY THE THIRD ONE, IT SAYS WATCH,

01:16:34 11   ACB GLOBALS.

01:16:41 12   AND THEN THE NEW SYNTAX, THE ACTUAL COMMAND WOULD BE WATCH

01:16:44 13   ACB GLOBALS; IS THAT CORRECT?

01:16:45 14   A.   YES.

01:16:46 15   Q.   OKAY. SO WOULD THAT BE WHAT YOU HAVE BEEN DESCRIBING AS

01:16:49 16   THE UNIFIED INTERFACE OR GENERIC COMMAND?

01:16:51 17   A.   RIGHT. SO THE IDEA IS THE WATCH ACB GLOBALS, THAT'S AN

01:16:56 18   EXAMPLE OF A COMMAND THAT A USER WOULD ACTUALLY TYPE INTO THE

01:16:58 19   SYSTEM.

01:16:58 20   Q.   THEN IF YOU LOOK AT THE OLD COMMAND LINE SYNTAX, THAT

01:17:04 21   WOULD BE THE SYNTAX THAT CAME FROM THE TOOL THAT WOULD BE THE

01:17:07 22   USER INTERFACE DESIGNED BY THE TOOL DEVELOPER; IS THAT RIGHT?

01:17:11 23   A.   CORRECT.

01:17:11 24   Q.   COULD YOU EXPLAIN TO THE JURY WHY THERE ARE THREE ENTRIES

01:17:15 25   CORRESPONDING TO WATCH ACB GLOBALS AND THAT'S BASEVIEW,

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01:17:20 1   BASEVIEW-G, AND THEN THERE'S BASEVIEW-H, THEN PRESS G. SO

01:17:28 2   WHAT'S GOING ON THERE?

01:17:29 3   A.   SO THE IDEA IS THAT IN ADDITION TO SORT OF UNIFYING THE

01:17:31 4   SYNTAX, IT'S ALSO TRYING TO SIMPLIFY. IN THIS CASE, TO PERFORM

01:17:36 5   THE FUNCTION OF, THAT'S DESCRIBED IN THE FIRST COLUMN OF WATCH,

01:17:41 6   BASE, GLOBAL CLIENT-SERVER INFORMATION.

01:17:43 7   IT USED TO BE THE CASE THAT YOU HAD TO INPUT THE THREE

01:17:46 8   COMMANDS, THE THREE THAT ARE HIGHLIGHTED IN THE RIGHT COLUMN,

01:17:50 9   AND THEY'VE NOW BEEN INTEGRATED AND UNIFIED INTO THE SINGLE

01:17:53 10   SYNTAX OF ACB GLOBALS SO THE USER CAN NOW INPUT ONE SIMPLE

01:17:58 11   COMMAND, AND IT WILL HAVE THE EFFECT OF EXECUTING THE THREE

01:18:04 12   COMMANDS ON THE RIGHT.

01:18:05 13   Q.   SO LET ME GET THIS RIGHT. SO WITH THE OLD TOOL, IF I JUST

01:18:09 14   HAVE THE TOOL BY ITSELF, I WOULD SET UP THE SCREEN, THE

01:18:12 15   COMPUTER TERMINAL, AND I WOULD TYPE BASEVIEW, ENTER, THEN I

01:18:17 16   WOULD TYPE BASEVIEW-G, ENTER, AND THEN BASEVIEW-H, THEN PRESS

01:18:24 17   G?

01:18:26 18   MR. KRISHNAN: OBJECTION, YOUR HONOR. LEADING.

01:18:27 19   MR. PAK: THAT IS RIGHT --

01:18:28 20   THE COURT: IT'S SUMMARY. OVERRULED.

01:18:30 21   THE WITNESS: THAT'S CORRECT.

01:18:32 22   BY MR. PAK:

01:18:32 23   Q.   SO THERE WILL BE THREE SEPARATE COMMANDS, AS YOU

01:18:35 24   TESTIFIED?

01:18:36 25   A.   I THINK FOUR, IF YOU EXCLUDE THE PRESSING G'S.

01:18:40 1   Q.   ALL RIGHT. SO -- AND BASEVIEW IS THAT A SINGLE WORD

01:18:44 2   COMMAND OR A MULTIWORD COMMAND THAT WE SEE ON THE RIGHT-HAND

01:18:47 3   SIDE?

01:18:47 4   A.   BASEVIEW IS JUST ONE WORD.

01:18:49 5   Q.   AND THEN IF YOU LOOK AT THE NEW SYNTAX IN THE MIDDLE,

01:18:54 6   WATCH ACB GLOBALS, YOU WOULD JUST TYPE THAT COMMAND ONCE;

01:18:57 7   CORRECT?

01:18:57 8   A.   CORRECT.

01:18:58 9   Q.   AND THEN YOU WOULD PERFORM THE SAME FUNCTION AS IT IS FOUR

01:19:02 10   COMMANDS THAT WE SEE ON THE RIGHT-HAND SIDE; IS THAT CORRECT?

01:19:04 11   A.   CORRECT.

01:19:04 12   Q.   AND IS IT WATCH ACB GLOBALS, IS THAT A SINGLE WORD COMMAND

01:19:14 13   OR A MULTIWORD COMMAND?

01:19:15 14   A.   I THINK WE CAN ALL SEE IT'S THREE WORDS.

01:19:18 15   Q.   OKAY. AND THEN IF WE GO TO THE -- THE INTERESTING

01:19:25 16   EXAMPLE, THE FIFTH ENTRY. IN THE MIDDLE THERE IT SAYS NEW

01:19:28 17   SYNTAX, WATCH ACB GLOBALS; CORRECT?

01:19:33 18   A.   YES.

01:19:36 19   Q.   SO IT'S THE SAME COMMAND WE SAW EARLIER, BUT THIS TIME

01:19:42 20   IT'S TALKING ABOUT A DIFFERENT TOOL?

01:19:44 21   A.   CORRECT.

01:19:44 22   Q.   SO FOR THIS TOOL WHAT WOULD BE THE COMMANDS ASSOCIATED

01:19:47 23   WITH THE SAME FUNCTION IN THE CONTEXT OF THE OLD COMMAND LINE

01:19:51 24   SYNTAX?

01:19:51 25   A.   SO THEY ARE THE THREE, AGAIN, WE HAVE TO DO FOUR COMMANDS.

01:19:55 1   IT'S APPVIEW, APPVIEW-G, APPVIEW-I, AND THEN APPARENTLY PRESS

01:20:02 2   G.

01:20:03 3   Q.   OKAY. SO, AGAIN, YOU WOULD HAVE TO TYPE FOUR SEPARATE

01:20:06 4   COMMANDS IN THE OLD APPVIEW CLI IN ORDER TO PERFORM THE SAME

01:20:11 5   FUNCTION AS WATCH ACB GLOBAL AS A SINGLE COMMAND?

01:20:14 6   A.   CORRECT.

01:20:14 7   Q.   AND SO WHAT IS THE BENEFIT TO A USER OF HAVING THE

01:20:19 8   PATENTED INVENTION WHERE YOU CAN TYPE A SINGLE MULTIWORD

01:20:23 9   COMMAND LIKE WATCH ACB GLOBALS TO CONTROL DIFFERENT TYPES OF

01:20:30 10   TOOLS?

01:20:30 11   A.   WELL, I THINK WE CAN SEE THE BENEFIT SORT OF ON THIS SLIDE

01:20:33 12   BY LOOKING AT THE MIDDLE COLUMN. SO SOMEONE HAS GONE TO THE

01:20:35 13   EFFORT TO STUDY THE OLD COMMAND SYNTAX AND HAS UNIFIED THEM IN

01:20:40 14   A MUCH SIMPLER, CLEANER SYNTAX THAT IS HOPEFULLY GOING TO BE

01:20:45 15   MORE INTUITIVE FOR THE USER TO USE, WHEREAS -- SO I THINK THE

01:20:48 16   MIDDLE COLUMN FAIRLY VIEWED IS CLEANER AND SIMPLER WHEREAS THE

01:20:55 17   RIGHT-HAND COLUMN IS A LITTLE BIT MORE COMPLEX AND ARCHAIC.

01:20:59 18   Q.   AND, AGAIN, IS THE DESIGNER OF THE NEW SYNTAX RESTRICTED

01:21:05 19   TO THESE PARTICULAR WORDS OR COULD THEY HAVE CHOSEN ANY WORDS?

01:21:09 20   A.   THEY COULD HAVE CHOSEN WHATEVER THEY WANTED.

01:21:11 21   Q.   NOW, ARE YOU FAMILIAR WITH SOMETHING CALLED CLAIMS OF A

01:21:14 22   PATENT?

01:21:14 23   A.   I AM.

01:21:15 24   Q.   OKAY. SO LET'S TAKE A LOOK AT THE TWO CLAIMS THAT ARE

01:21:17 25   BEING ASSERTED IN THIS CASE, AND THAT'S THE NEXT SLIDE, 12.

01:21:21 1   LOTS OF WORDS HERE.

01:21:22 2   AT A HIGH LEVEL, DR. JEFFAY, WHAT ARE THE TWO CLAIMS OF

01:21:26 3   THE '526 PATENT THAT ARE BEING ASSERTED IN THIS CASE?

01:21:29 4   A.   SO THE CLAIMS ARE WHAT DEFINE THE INVENTION. AND WHAT WE

01:21:33 5   ARE GOING TO LOOK AT ARE TWO INSTANCES OF THE INVENTION, THE

01:21:36 6   INVENTION OF CLAIM 1 AND THE INVENTION OF CLAIM 14.

01:21:40 7   AND CLAIM 1 IS GOING TO BE A METHOD, AS I MENTIONED

01:21:46 8   EARLIER. SO IT'S GOING TO BE A SET OF STEPS THAT ARE PERFORMED

01:21:50 9   BY A COMPUTER. AND WE ARE GOING TO GO INTO THE DETAILS OF THEM

01:21:53 10   BUT BASICALLY THE CLAIM IS LISTING THREE SEPARATE STEPS.

01:21:55 11   Q.   OKAY. SO, MR. FISHER, COULD WE HIGHLIGHT METHOD ON THIS

01:21:59 12   SLIDE FOR CLAIM 1. OKAY.

01:22:04 13   AND THEN CLAIM 14, CAN YOU DESCRIBE TO THE JURY WHAT CLAIM

01:22:07 14   14 IS COVERING?

01:22:08 15   A.   SURE.

01:22:09 16   SO CLAIM 14 IS RELATED TO THE METHOD, EXCEPT CLAIM 14 IS

01:22:14 17   AN INVENTION WHERE YOU HAVE A COMPUTER READABLE MEDIUM THAT

01:22:19 18   STORES THE INSTRUCTIONS FOR PERFORMING THE STEPS THAT ARE

01:22:24 19   LISTED HERE, AND IT'S GOING TO TURN OUT THAT THE STEPS ARE THE

01:22:26 20   SAME AS THE STEPS TO CLAIM 1.

01:22:28 21   Q.   AND, MR. FISHER, COULD WE HIGHLIGHT COMPUTER READABLE

01:22:32 22   MEDIUM.

01:22:33 23   AND WHAT ARE SOME COMMON EXAMPLES OF A COMPUTER READER

01:22:36 24   MEDIUM?

01:22:37 25   A.   THE MOST COMMON ONE I CAN THINK OF IS THE HARD DRIVE IN

01:22:42 1   YOUR COMPUTER AND THE MAIN MEMORY IN YOUR COMPUTER.

01:22:44 2   Q.   OKAY. YOU COULD ALSO HAVE A DVD?

01:22:48 3   A.   YOU COULD HAVE A DVD, YOU COULD HAVE A TAPE, YOU COULD

01:22:52 4   HAVE A THUMB DRIVE, ALL SORTS OF THINGS.

01:22:54 5   Q.   SO I THINK HER HONOR MENTIONED THIS THAT SHE'S PROVIDING

01:22:57 6   CLAIM CONSTRUCTIONS IN THIS CASE. DO YOU RECALL THAT?

01:22:59 7   A.   ABSOLUTELY.

01:23:00 8   Q.   AND YOU KNOW THAT YOU HAVE TO FOLLOW HER CLAIM

01:23:02 9   CONSTRUCTIONS VERY CAREFULLY?

01:23:05 10   A.   ABSOLUTELY RIGHT.

01:23:05 11   Q.   AND HAVE YOU DONE THAT IN THIS CASE?

01:23:07 12   A.   I HAVE.

01:23:07 13   Q.   OKAY. GOOD. SO LET'S TAKE A LOOK AT THE SPECIFIC CLAIM

01:23:10 14   CONSTRUCTIONS THAT HER HONOR HAS ISSUED TO ALL OF US TO FOLLOW

01:23:14 15   IN THIS CASE, AND THAT'S SLIDE 13.

01:23:18 16   AND WHAT I'M GOING TO ASK YOU TO DO IS IDENTIFY ON THE

01:23:21 17   RECORD THE CLAIM TERM, HAVE YOU READ THE COURT'S CLAIM

01:23:26 18   CONSTRUCTION INTO THE RECORD, AND THEN BRIEFLY DESCRIBE WHAT

01:23:29 19   YOU WERE LOOKING FOR IN APPLYING THE CLAIM CONSTRUCTION TO THE

01:23:32 20   ACCUSED PRODUCT.

01:23:33 21   A.   SURE.

01:23:34 22   SO, AGAIN, THE IDEA IS THAT THE LEFT-HAND COLUMN, THESE

01:23:36 23   ARE ACTUAL WORDS AND PHRASES THAT APPEAR IN CLAIMS 1 AND 14.

01:23:40 24   AND ON THE RIGHT-HAND COLUMN IS THE COURT'S DEFINITION OF THEM.

01:23:44 25   SO FOR THE FIRST ONE IS MANAGEMENT PROGRAMS. THAT'S THE

01:23:48 1   TERM OF THE CLAIMS. AND THE DEFINITION IS TOOLS OR AGENTS

01:23:50 2   CONFIGURED TO EXECUTE USER DIRECTED COMMANDS HAVING THEIR OWN

01:23:54 3   RESPECTIVE COMMAND FORMATS THAT PROVIDE MANAGEMENT FUNCTIONS.

01:23:59 4   Q.   WE HAVE TO SLOW DOWN. AND WHAT WERE YOU LOOKING FOR IN

01:24:02 5   APPLYING THAT CLAIM CONSTRUCTION?

01:24:04 6   A.   SO WHEN I ANALYZED THE SOFTWARE AND THE ARISTA SYSTEMS AND

01:24:09 7   THE CISCO IOS XR SYSTEMS, WHAT I'M GOING TO BE LOOKING FOR IS

01:24:14 8   DO THEY HAVE TOOLS OR AGENTS AND ARE THESE TOOLS, DO THEY EXIST

01:24:18 9   TO EXECUTE COMMANDS THAT ARE ULTIMATELY INPUT BY A USER WHERE

01:24:24 10   THE COMMANDS HAVE THEIR OWN PARTICULAR FORMAT AND THAT THE

01:24:27 11   COMMANDS PROVIDE MANAGEMENT FUNCTIONS.

01:24:28 12   Q.   OKAY. AND I JUST WANT TO CLARIFY SOMETHING, BECAUSE THE

01:24:31 13   JURY MIGHT BE CONFUSED, WHICH IS YOU LOOKED AT ARISTA SOURCE

01:24:34 14   CODE AND WHAT WAS THE PURPOSE OF LOOKING AT ARISTA'S SOURCE

01:24:39 15   CODE?

01:24:39 16   A.   TO DETERMINE IF ARISTA'S PRODUCTS INFRINGE THE PATENT.

01:24:42 17   Q.   OKAY. YOU ALSO SAID YOU LOOKED AT CISCO'S SOURCE CODE;

01:24:44 18   CORRECT?

01:24:44 19   A.   YES.

01:24:45 20   Q.   BUT CISCO OWNS THIS PATENT?

01:24:46 21   A.   YES.

01:24:47 22   Q.   SO WHY WERE YOU LOOKING AT CISCO'S SOURCE CODE WITH

01:24:49 23   RESPECT TO CISCO'S PATENT?

01:24:50 24   A.   TO DEMONSTRATE THAT CISCO ACTUALLY USES THE PATENT.

01:24:53 25   Q.   GREAT. AND WE ARE GOING TO TALK ABOUT BOTH OF THOSE

01:24:56 1   TOPICS TODAY; CORRECT?

01:24:57 2   A.   YES.

01:24:57 3   Q.   SO LET'S HAVE YOU READ -- GO THROUGH THE CLAIMS

01:25:01 4   CONSTRUCTION FROM THE COURT.

01:25:02 5   A.   SO FOR GENERIC COMMAND THAT MEANS A COMMAND THAT PROVIDES

01:25:04 6   AN ABSTRACTION OF THE TOOL SPECIFIC COMMAND FORMATS AND SYNTAX

01:25:09 7   ENABLING THE USER TO ISSUE THE COMMAND BASED ON THE RELATIVE

01:25:12 8   FUNCTIONS AS OPPOSED TO THE SPECIFIC SYNTAX FOR A CORRESPONDING

01:25:16 9   TOOL.

01:25:17 10   Q.   OKAY. AND WHAT WERE YOU LOOKING FOR IN APPLYING THE

01:25:20 11   COURT'S CONSTRUCTION OF GENERIC COMMAND?

01:25:22 12   A.   SO THIS ONE IS A BIT OF A MOUTHFUL, BUT THE BASIC IDEA IS

01:25:26 13   THAT THE TOOL IS GOING TO HAVE ITS OWN SPECIFIC SYNTAX.

01:25:29 14   AND GENERIC COMMAND IS AN ABSTRACTION. SO YOU CAN THINK

01:25:33 15   OF IT AS MAYBE A SIMPLIFICATION OF THAT SYNTAX. SO IT HAS TO

01:25:36 16   HAVE A SEPARATE SYNTAX. AND IT HAS TO BE THE CASE THAT IT

01:25:39 17   ENABLES THE USER, BY USING THIS SIMPLIFIED SYNTAX, TO EXECUTE

01:25:45 18   THE FUNCTION CORRESPONDING TO THE MORE COMPLEX OR TOOL-SPECIFIC

01:25:50 19   SYNTAX.

01:25:51 20   Q.   OKAY. AND, AGAIN, YOU USE THE WORD SIMPLIFY. DOES IT

01:25:56 21   MEAN THE PERSON WHO AUTHORS THE GENERIC COMMAND, ARE THEY

01:25:58 22   RESTRICTED IN CERTAIN WAYS OR COULD THEY COME UP WITH OTHER

01:26:02 23   WORDS?

01:26:02 24   A.   THEY CAN PRETTY MUCH CHOOSE WHATEVER THEY WANT. IT BETTER

01:26:05 25   BE SOMETHING BETTER THAN THE SPECIFIC SYNTAX OF THE TOOL.

01:26:08 1   Q.   OKAY. BUT WHAT'S BETTER, IS THAT UP TO -- WHO DECIDES

01:26:12 2   WHAT'S BETTER OR NOT?

01:26:13 3   A.   IT WOULD, OF COURSE, BE THE PERSON THAT'S IMPLEMENTING THE

01:26:16 4   INVENTION.

01:26:17 5   Q.   THE THIRD CLAIM TERM IS COMMAND PARSE TREE. CAN YOU

01:26:20 6   DESCRIBE WHAT THE COURT'S CONSTRUCTION OF THAT TERM WAS?

01:26:23 7   A.   SURE. SO THIS ONE IS A LITTLE SIMPLER, THIS IS JUST A

01:26:27 8   HIERARCHICAL DATA STRUCTURE. SO THIS WAS THAT TREE WE SAW A

01:26:31 9   COUPLE OF SLIDES AGO.

01:26:31 10   Q.   OKAY. SO YOU WERE LOOKING FOR A STRUCTURE THAT WAS

01:26:36 11   HIERARCHICAL?

01:26:37 12   A.   JUST A HIERARCHICAL DATA STRUCTURE, YES.

01:26:40 13   Q.   THE NEXT ONE IS VALIDATING STEP, INCLUDING IDENTIFYING ONE

01:26:44 14   OF THE ELEMENTS AS A BEST MATCH RELATIVE TO THE GENERIC

01:26:47 15   COMMAND. AND CAN YOU EXPLAIN WHAT THE COURT'S GUIDANCE WAS FOR

01:26:50 16   THIS PARTICULAR TERM AND HOW YOU APPLIED IT?

01:26:52 17   A.   SURE. SO THIS ONE IS A LITTLE DIFFERENT BECAUSE THE COURT

01:26:55 18   TELLS US THAT WE ARE JUST TO APPLY THE PLAIN AND ORDINARY

01:26:58 19   MEANING.

01:26:59 20   SO THIS IS UNDERSTOOD AS A PERSON OF ORDINARY SKILL IN THE

01:27:03 21   ART WHO IS READING THE PATENT, IT WOULD BE HOWEVER THEY

01:27:06 22   UNDERSTAND THE TERMS, WITH THE EXCEPTION OF THINGS LIKE GENERIC

01:27:10 23   COMMAND THAT APPEAR IN THE PHRASE BECAUSE THE COURT HAS GIVEN

01:27:14 24   US A CONSTRUCTION FOR GENERIC COMMAND.

01:27:15 25   Q.   AND AT A HIGH LEVEL, WHAT TYPE OF ELEMENT WERE YOU LOOKING

01:27:18 1   FOR WITH RESPECT TO THIS CLAIM LIMITATION?

01:27:20 2   A.   SO THIS IS GOING TO BE A PARTICULAR STEP, SO WHAT WE ARE

01:27:24 3   GOING TO DO IS LOOK FOR CODE THAT IS USED TO IDENTIFY ONE OF

01:27:32 4   THE GENERIC COMMANDS THAT THE BEST MATCH FOR WHAT A USER HAS

01:27:35 5   INPUT.

01:27:36 6   Q.   OKAY. AND THEN -- SO EVEN IF THE USER MAYBE MAKES A

01:27:42 7   SPELLING MISTAKE OR PROVIDES ONLY PART OF THE COMMAND NAME,

01:27:46 8   WOULD SOMETHING LIKE THAT COUNT AS A BEST MATCH?

01:27:49 9   A.   IF THE SYSTEM IS ABLE TO PROVIDE AN APPROPRIATE RESPONSE,

01:27:53 10   THEN IN LIGHT OF THE FACT THAT SOMETHING WAS INCOMPLETE, THAT

01:27:56 11   WOULD BE A BEST MATCH.

01:27:57 12   Q.   OKAY. SO LET'S GO TO THE NEXT STEP. CAN YOU DESCRIBE

01:28:01 13   THAT CLAIM TERM, READ THE COURT'S CONSTRUCTION INTO THE RECORD

01:28:04 14   AND EXPLAIN HOW YOU APPLIED IT?

01:28:06 15   A.   OKAY. THE CLAIM TERM IS THE COMMAND PARSE TREE HAVING

01:28:09 16   ELEMENTS, EACH SPECIFYING AT LEAST ONE CORRESPONDING GENERIC

01:28:13 17   COMMAND COMPONENT AND A CORRESPONDING OF AT LEAST ONE COMMAND

01:28:17 18   ACTION VALUE.

01:28:18 19   SO FIRST WE ARE GOING TO -- THE COURT HAS GIVEN US A

01:28:21 20   DEFINITION FOR COMMAND ACTION VALUE, AND THAT'S A VALUE THAT

01:28:26 21   IDENTIFIES A PRESCRIBED COMMAND. AND A PRESCRIBED COMMAND, YOU

01:28:29 22   THINK OF THAT IS THE COMMAND THAT'S SPECIFIC TO A TOOL.

01:28:31 23   SO WITH THAT UNDERSTANDING OF A COMMAND ACTION VALUE, THE

01:28:35 24   ENTIRE PHRASE THEN BECOMES, COMMAND PARSE TREE HAVING ELEMENTS

01:28:40 25   SUCH THAT EACH ELEMENT SPECIFIES AT LEAST ONE COMMAND ACTION

01:28:43   1   VALUE FOR EACH GENERIC COMMAND COMPONENT.

01:28:47   2   Q.   AND HOW DID YOU APPLY THAT CONSTRUCTION TO YOUR ANALYSIS?

01:28:50   3   A.   WELL, THIS APPLIES TO THE COMMAND PARSE TREE. SO WHEN I'M

01:28:55   4   ANALYZING THE COMMAND PARSE TREE, I'M TRYING TO CONFIRM THAT

01:29:00   5   EACH ELEMENT IN THE TREE SPECIFIES AT LEAST ONE COMMAND ACTION

01:29:05   6   VALUE, WHICH IS DEFINED ABOVE, FOR EACH GENERIC COMMAND

01:29:08   7   COMPONENT. AND YOU CAN THINK OF EACH GENERIC COMMAND COMPONENT

01:29:11   8   AS LIKE A WORD IN THE COMMAND.

01:29:13   9   Q.   SO WHEN THE COURT'S CONSTRUCTION SAYS, AT LEAST ONE

01:29:17 10   COMMAND ACTION VALUE, WHAT DOES THAT TELL YOU ABOUT WHAT YOU

01:29:21 11   ARE LOOKING FOR?

01:29:21 12   A.   I'M JUST INTERPRETING THAT ACCORDING TO JUST PLAIN ENGLISH

01:29:24 13   SAYING THERE HAS TO BE ONE BUT THERE CAN BE MORE, MORE THAN

01:29:28 14   ONE.

01:29:28 15   Q.   NOW, LET'S LOOK AT THE INFRINGEMENT ANALYSIS THAT YOU DID.

01:29:32 16   CAN YOU SUMMARIZE FOR US THE TYPE OF HARDWARE PRODUCTS YOU

01:29:36 17   LOOKED AT AS WELL AS THE TYPE OF SOFTWARE OR OPERATING SYSTEM

01:29:42 18   PRODUCTS YOU LOOKED AT?

01:29:43 19   A.   SO MY ANALYSIS IS BASED ON THE SOFTWARE THAT RUNS THE

01:29:45 20   ARISTA PRODUCTS, AND IN PARTICULAR, MY ANALYSIS IS BASED ON

01:29:49 21   SOFTWARE THAT I UNDERSTAND IS PRESENT IN EOS, THAT'S THE NAME

01:29:53 22   OF THEIR OPERATING SYSTEM, EOS, EOS PLUS, AND VEOS.

01:29:57 23   SO ANY ARISTA PRODUCT THAT RUNS EITHER OF THESE THREE

01:30:01 24   OPERATING SYSTEMS WOULD FALL UNDER MY ANALYSIS. AND SOME

01:30:04 25   SAMPLE PRODUCTS ARE LISTED HERE, ALL THESE PRODUCT NUMBERS.

01:30:09 1   Q.   AND WERE YOU HERE FOR THE TESTIMONY OF MR. SWEENEY WHEN HE

01:30:13 2   SAID THAT, WITH RESPECT TO THE PATENT, ALL OF THESE DIFFERENT

01:30:17 3   PRODUCTS AND VERSIONS RUN SUBSTANTIALLY THE SAME WAY?

01:30:20 4   A.   YES, WITH RESPECT TO THE -- YOU ARE SAYING WITH RESPECT TO

01:30:25 5   THE COMMAND-LINE INTERFACE, YES.

01:30:25 6   Q.   OKAY. AND SO IS THERE ANY DISPUTE BETWEEN YOU AND

01:30:29 7   ARISTA'S EXPERT ABOUT WHETHER ALL OF THESE PRODUCTS PROVIDE THE

01:30:33 8   SAME FUNCTIONALITY IN TERMS OF THE INFRINGEMENT ANALYSIS?

01:30:38 9   A.   I DON'T BELIEVE THERE'S A DISPUTE.

01:30:40 10   Q.   SO IF WE CAN SHOW INFRINGEMENT OF ONE OF THE PRODUCTS YOU

01:30:44 11   HAVE SHOWN INFRINGEMENT FOR ALL OF THE PRODUCTS THAT ARE

01:30:47 12   ACCUSED; IS THAT CORRECT?

01:30:47 13   A.   THAT'S MY UNDERSTANDING, YES.

01:30:49 14   Q.   ALL RIGHT. SO NOW LET'S LOOK AT SOME OF THE SPECIFIC

01:30:51 15   EVIDENCE THAT YOU LOOKED AT. WHAT IS THIS THAT WE ARE SEEING

01:30:55 16   ON SLIDE 17?

01:30:56 17   A.   THIS IS AN EXAMPLE OF AN ARISTA SWITCH. THIS IS A 48 PORT

01:31:00 18   ETHERNET SWITCH, IT'S MODEL 7010T. THAT WAS MADE AVAILABLE TO

01:31:05 19   INSPECTION. IT'S ABOUT THE SIZE OF A PIZZA BOX, AND THESE ARE

01:31:09 20   OFTEN CALLED PIZZA BOX SWITCHES.

01:31:11 21   THE IDEA IS ON THE FRONT YOU SEE ALL THESE PORTS AND YOU

01:31:14 22   WOULD HAVE TYPICALLY LOTS OF ETHERNET CABLES PLUGGED INTO THEM,

01:31:18 23   BUT THIS ONE JUST HAS A LAPTOP PLUGGED IN. SO THIS WAS A

01:31:21 24   SWITCH THAT I OPERATED.

01:31:22 25   Q.   OKAY. GREAT. SO LET'S TAKE A LOOK AT SOME OF THE WORK

01:31:26 1   THAT YOU DID WITH THE SWITCH. ON SLIDE 18, CAN YOU EXPLAIN

01:31:30 2   WHAT WE ARE SEEING ON THE TWO SIDES OF THE SCREEN?

01:31:32 3   A.   SURE. ON THE LEFT YOU SEE ME TYPING ONTO THE LAPTOP

01:31:37 4   THAT'S CONNECTED TO THE SWITCH, AND I'M JUST SHOWING EXAMPLES

01:31:40 5   OF USING THE COMMAND-LINE INTERFACE. AND BECAUSE UNFORTUNATELY

01:31:45 6   THE VIDEO IS SMALL AND NOT PARTICULARLY CLEAR, I'M JUST

01:31:49 7   ILLUSTRATING ON THE RIGHT A CARTOON THAT REPRESENTS WHAT I

01:31:53 8   ACTUALLY TYPED IN.

01:31:54 9   SO IN THIS CASE I TYPED IN THE COMMAND SHOW SNMP MIB, AND

01:31:59 10   ALL THE OUTPUT THAT YOU SAW SCROLL BY ON THE SCREEN WAS THE

01:32:03 11   OUTPUT OF EXECUTING THAT COMMAND.

01:32:04 12   Q.   AND IS THIS ONE OF THE COMMANDS THAT YOU'VE IDENTIFIED AS

01:32:09 13   AN INFRINGING COMMAND OF THE '526 PATENT?

01:32:12 14   A.   I THINK WHAT I'VE IDENTIFIED IS THAT THE PARSING OF THIS

01:32:15 15   COMMAND WOULD PRACTICE THE METHOD OF CLAIM 1.

01:32:18 16   Q.   ALL RIGHT. THANK YOU. SO, AGAIN, THE PATENT IS NOT ABOUT

01:32:20 17   THE SPECIFIC COMMANDS SYNTAX. IT'S ABOUT THE PARSING CODE; IS

01:32:24 18   THAT CORRECT?

01:32:24 19   A.   CORRECT.

01:32:26 20   Q.   SO IN WE LOOK AT THE NEXT DOCUMENT, WHAT DO WE SEE HERE?

01:32:35 21   A.   THIS IS A DOCUMENT, THIS IS AN ARISTA DOCUMENT,

01:32:40 22   EXHIBIT 34 --

01:32:40 23   Q.   ACTUALLY, YOU KNOW, I THINK THIS MIGHT NOT BE ADMITTED

01:32:43 24   YET, SO LET'S MOVE THAT INTO EVIDENCE. IF YOU COULD LOOK AT

01:32:49 25   EXHIBIT 34 IN YOUR WITNESS BINDER.

01:32:58   1   DR. JEFFAY, DO YOU RECOGNIZE THIS DOCUMENT?

01:32:59   2   A.   YES.   THIS IS AN ARISTA WHITE PAPER THAT'S ENTITLED "EOS,

01:33:03   3   THE NEXT GENERATION EXTENSIBLE OPERATING SYSTEM."

01:33:06   4   Q.   AND IS THIS ONE OF THE DOCUMENTS THAT YOU CONSIDERED IN

01:33:08   5   THE CASE?

01:33:08   6   A.   IT IS.

01:33:10   7   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE THIS

01:33:11   8   DOCUMENT WHICH IS EXHIBIT 34 INTO EVIDENCE.

01:33:15   9   MR. KRISHNAN: NO OBJECTION YOUR HONOR.

01:33:16   10   THE COURT: IT WILL BE ADMITTED.

01:33:18   11   (PLAINTIFF'S EXHIBIT 34 WAS ADMITTED INTO EVIDENCE.)

01:33:18   12   BY MR. PAK:

01:33:19   13   Q.   SO WITH THAT LET'S TAKE A LOOK AT THE DEMONSTRATION THAT

01:33:24   14   YOU HAVE.   WHAT ARE WE LOOKING AT ON PAGE 19 OF YOUR

01:33:26   15   PRESENTATION?

01:33:27   16   A.   SO THIS IS A FIGURE FROM THAT DOCUMENT THAT WE JUST

01:33:30   17   MENTIONED, IT'S FIGURE 2.   AND THIS IS A FIGURE THAT

01:33:34   18   ILLUSTRATES THE EOS ARCHITECTURE.   AND BY ARCHITECTURE HERE,

01:33:39   19   THIS IS REFERRING TO SOFTWARE ARCHITECTURE, HOW THE SOFTWARE

01:33:43   20   COMPONENTS ARE ARRANGED.

01:33:46   21   AND I WILL CALL YOUR ATTENTION TO THE MIDDLE OF THE

01:33:48   22   FIGURE, THE WHITES BOX LABELED EOS, WITH THIS LITTLE BLUE

01:33:51   23   ATOM-LIKE DIAGRAM THAT SAYS SYSDB IN THE MIDDLE, AND THIS IS

01:33:56   24   ONE OF THE KEY STRUCTURES THAT I ANALYZED.

01:34:00   25   THIS SYSDB STANDS FOR THE SYSTEM DATABASE WHICH IS A

01:34:03 1   CENTRAL DATABASE, AND THIS IS GOING TO BE USED IN THE PARSING

01:34:10 2   OF COMMANDS PARTICULARLY TO ISSUE PRESCRIBED COMMANDS TO WHAT

01:34:14 3   EOS CALLS AGENTS.

01:34:15 4   Q.   OKAY. AND WE ARE GOING TO FOCUS JUST ON ONE AGENT FOR THE

01:34:18 5   PURPOSE OF THE INFRINGEMENT ANALYSIS IN DETAIL. BUT YOU

01:34:22 6   UNDERSTAND, SIR, THERE ARE MULTIPLE AGENTS THAT WORK WITH

01:34:24 7   SYSDB?

01:34:25 8   A.   YES.

01:34:25 9   Q.   AND THAT'S WHAT WE HEARD FROM MR. SWEENEY HERE TODAY?

01:34:28 10   A.   YES.

01:34:29 11   Q.   SO LET'S TAKE A LOOK AT THE NEXT SLIDE. I BELIEVE THIS IS

01:34:34 12   ALSO TAKEN OUT OF ANOTHER DOCUMENT, ACTUALLY, SO LET'S LOOK AT

01:34:40 13   EXHIBIT 32 IN YOUR BINDER. AND TELL ME WHAT DOCUMENT THAT IS?

01:34:45 14   A.   THIS IS FROM THE WEB, AND THIS IS A DOCUMENT FROM A

01:34:48 15   WEBSITE CALLED GET HUB, WHICH IS A WEBSITE USED BY SOFTWARE

01:34:52 16   DEVELOPERS, AND IT'S FROM A PORTION OF THE WEBSITE THAT

01:34:56 17   CONTAINS CONTENT DEVELOPED BY ARISTA NETWORKS.

01:35:00 18   AND THIS PARTICULAR DOCUMENT IS TITLED, "AN INTRODUCTION

01:35:05 19   TO EASE'S ARCHITECTURE."

01:35:07 20   Q.   SO THIS WAS WEB CONTENT AUTHORED BY ARISTA AND PUBLISHED

01:35:11 21   FOR THE WORLD TO SEE?

01:35:12 22   A.   THAT'S MY UNDERSTANDING YES.

01:35:14 23   MR. PAK: SO AT THIS TIME, YOUR HONOR, I WOULD LIKE

01:35:15 24   TO MOVE INTO EVIDENCE EXHIBIT 32.

01:35:18 25   MR. KRISHNAN: NO OBJECTION, YOUR HONOR.

01:35:19   1   THE COURT: IT WILL BE ADMITTED.

01:35:20   2   (PLAINTIFF'S EXHIBIT 32 WAS ADMITTED INTO EVIDENCE.)

01:35:20   3   BY MR. PAK:

01:35:20   4   Q.   SO LET'S TAKE A LOOK AT THE SLIDE. AND IT LOOKS LIKE A

01:35:24   5   SLIGHTLY DIFFERENT RENDERING OF WHAT WE SAW. CAN YOU WALK US

01:35:27   6   THROUGH WHAT WE ARE SEEING ON THE SLIDE?

01:35:28   7   A.   THIS IS SYSDB. YOU ARE RIGHT, IT'S JUST A DIFFERENT

01:35:31   8   CONCEPTUAL DRAWING. SO SYSDB IS A DATABASE, AND IT'S A

01:35:37   9   DATABASE THAT'S USED BY WHAT ARE CALLED AGENTS IN EOS TO DO

01:35:41   10   THEIR WORK.

01:35:41   11   AND THE WAY IT WORKS IS THAT IF YOU WANT AN AGENT TO DO

01:35:44   12   SOMETHING, YOU WRITE A COMMAND FOR THE AGENT INTO THE DATABASE,

01:35:48   13   AND THEN THE AGENT WILL PICK UP THE COMMAND AND EXECUTE IT.

01:35:52   14   AND WHAT WE ARE GOING TO BE FOCUSSING ON IS ONE OF THE

01:35:54   15   AGENTS IN THE LOWER RIGHT-HAND CORNER LABELED CLI, WHICH STANDS

01:35:58   16   FOR THE COMMAND-LINE INTERFACE, AND THEN SOME OF THE OTHER

01:36:01   17   AGENTS AROUND SYSDB THAT WILL BE EXECUTING COMMANDS THAT ARE

01:36:06   18   INPUT VIA USER BY THE CLI.

01:36:08   19   Q.   I THINK WE HEARD A LITTLE BIT ABOUT THIS FROM MR. SWEENEY,

01:36:11   20   BUT WHAT HAPPENS IF ONE OF THESE AGENTS, FOR EXAMPLE, THE CLI

01:36:14   21   AGENT FAILS IN THE SYSTEM?

01:36:15   22   A.   AS A TECHNICAL MATTER, THESE AGENTS IN EOS ARE WHAT ARE

01:36:22   23   CALLED PROCESSES WHICH IS AN OPERATING SYSTEM TERM FOR THE

01:36:25   24   EXECUTION OF A PROGRAM. AND YOU CAN THINK OF THEM AS ALL THE

01:36:29   25   AGENTS, THEREFORE, ARE INDEPENDENT. THEY ARE INDEPENDENTLY

01:36:32 1   EXECUTING PROGRAMS.

01:36:33 2   AND IF ONE OF THEM WERE TO DIE, TO CRASH, FOR EXAMPLE, IN

01:36:37 3   THEORY, IT SHOULDN'T AFFECT THE OTHER PROCESSES.

01:36:39 4   AND SO BECAUSE OF THAT, YOU GET WHAT'S CALLED FAULT

01:36:43 5   TOLERANT DESIGN BECAUSE IF ONE THING DIES, THE ENTIRE SYSTEM

01:36:47 6   DOESN'T DIE.

01:36:47 7   Q.   OKAY. THANK YOU. AND IF WE TURN TO SLIDE 21, WHAT IS

01:36:53 8   THIS DEPICTION REPRESENTING?

01:36:54 9   A.   SO THIS IS A FIGURE THAT I MADE, AND THIS IS JUST SIMPLY A

01:36:58 10   DIFFERENT RENDITION OF THE PREVIOUS FIGURE WHERE I'VE PULLED

01:37:01 11   OUT THE CLI ON THE LEFT TO EMPHASIZE WHAT HAPPENS WHEN THE

01:37:05 12   SYSTEM PROCESSES COMMANDS.

01:37:08 13   SO THE CLI STANDS FOR COMMAND-LINE INTERFACE. THIS WILL

01:37:12 14   RECEIVE COMMANDS THAT ARE TYPED IN BY THE USER, AND IT WILL

01:37:16 15   PARSE THEM. IT WILL FIGURE OUT WHAT GENERIC COMMAND THEY

01:37:21 16   INPUT, WHAT SIMPLIFIED COMMAND THEY INPUT, TRANSLATE IT INTO A

01:37:25 17   COMMAND THAT'S SPECIFIC FOR SOME AGENT, SO A MORE LOWER LEVEL

01:37:29 18   COMMAND, IF YOU WILL, WRITE THAT COMMAND INTO SYSDB WHERE WE

01:37:35 19   ARE PICKED BY AN AGENT AND THEN EXECUTE IT.

01:37:40 20   Q.   LET'S START WALKING THROUGH THE DETAILS OF THE EOS PARSER

01:37:43 21   THAT YOU IDENTIFIED. AND ACTUALLY, LET'S HAVE YOU TURN TO

01:37:50 22   EXHIBIT 139 IN YOUR BINDER. ACTUALLY, IT SHOULD BE EXHIBIT 48

01:38:02 23   IN YOUR BINDER.

01:38:04 24   A.   OKAY. I HAVE IT.

01:38:06 25   Q.   OKAY. AND WHAT IS EXHIBIT 48?

01:38:08   1   A.   EXHIBIT 48 IS THE PRINTOUT OF A WEB PAGE FROM ARISTA'S

01:38:14   2   WEBSITE.

01:38:15   3   Q.   AND DID YOU CONSIDER THIS EVIDENCE IN FORMING YOUR

01:38:18   4   INFRINGEMENT OPINIONS?

01:38:18   5   A.   I DID.

01:38:19   6   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE EXHIBIT 48

01:38:21   7   INTO THE RECORD.

01:38:22   8   MR. KRISHNAN: NO OBJECTION, YOUR HONOR.

01:38:24   9   THE COURT: IT WILL BE ADMITTED.

01:38:26   10   (PLAINTIFF'S EXHIBIT 48 WAS ADMITTED INTO EVIDENCE.)

01:38:26   11   BY MR. PAK:

01:38:26   12   Q.   LET'S TAKE A LOOK AT YOUR ANALYSIS WITH RESPECT TO THIS

01:38:28   13   DOCUMENT.

01:38:29   14   ON SLIDE 22 OF YOUR PRESENTATION CAN YOU HELP US

01:38:32   15   UNDERSTAND THE RELEVANCE OF THIS PIECE OF EVIDENCE FROM ARISTA

01:38:34   16   TO YOUR INFRINGEMENT ANALYSIS?

01:38:36   17   A.   SURE.   SO THIS IS A DOCUMENT, AN ARISTA DOCUMENT, AND IT'S

01:38:40   18   TITLED "UNDERSTANDING EOS CLI LIMITATION."

01:38:44   19   AGAIN, CLI IS THE COMMAND-LINE INTERFACE.   AND TO

01:38:47   20   UNDERSTAND THE ANALYSIS THAT FOLLOWS, WE HAVE TO INTRODUCE SOME

01:38:51   21   TERMINOLOGY THAT EOS USES.

01:38:54   22   SO EOS HAS THIS NOTION OF WHAT'S CALLED A RULE, AND YOU

01:38:57   23   CAN THINK OF A RULE AS BASICALLY ANOTHER NAME FOR A COMMAND,

01:39:01   24   AND THEY CATEGORIZE THE COMMANDS IN THEIR SYSTEM BY DIFFERENT

01:39:05   25   TYPES OF RULES.

01:39:07 1   AND THIS CALLOUT HERE ON SLIDE 22 IS JUST SHOWING SOME OF

01:39:12 2   THE TYPES OF RULES THAT ARE SUPPORTED IN EOS.

01:39:16 3   Q.   AND WE ARE GOING TO WALK THROUGH IN DETAIL HOW ALL THESE

01:39:19 4   RULES WORK TOGETHER, RIGHT, DR. JEFFAY?

01:39:21 5   A.   YES, JUST SOME OF THEM.

01:39:23 6   Q.   LET'S JUST GO THROUGH AND ESTABLISH SOME OF THE

01:39:28 7   VOCABULARY. IF YOU GO TO THE NEXT SLIDE, THIS IS SHOWING THE

01:39:31 8   SAME EXHIBIT 48 AT PAGE 6, CAN YOU WALK US THROUGH SOME OF THE

01:39:36 9   VOCABULARY WE NEED TO KNOW?

01:39:38 10   A.   SURE. TWO OF THE RULE TYPES WE WILL HEAR ABOUT ARE THINGS

01:39:43 11   CALLED CONCAT RULE WHICH STANDS FOR CONCATENATIONS RULE. AND A

01:39:46 12   CONCATENATION BASICALLY SPECIFIES THAT A COMMAND IS A

01:39:54 13   CONCATENATION OF INDIVIDUAL WORDS, WORD 1, WORD 2, AND WORD 3.

01:40:01 14   "OR RULES" IS ANOTHER TYPE OF RULE WE WILL BE LOOKING AT.

01:40:04 15   AN "OR RULE" SAYS A COMMAND THAT CONSISTS OF A LIST AND

01:40:08 16   ANYTHING ON THAT LIST IS AN INSTANCE OF THAT RULE.

01:40:14 17   Q.   OKAY. SO CAN WE THINK OF CONCATENATION RULES AS AN AND

01:40:18 18   RULE?

01:40:18 19   A.   IF YOU'RE COMFORTABLE WITH LOGIC, IT'S AND, IT'S SAYING

01:40:22 20   IT'S WORD 1 AND WORD 2 AND WORD 3 AND SO ON.

01:40:27 21   Q.   AN OR RULE IS JUST AN OR RULE?

01:40:29 22   A.   RIGHT. IT WILL BE EITHER THIS OR THIS OR THIS.

01:40:32 23   Q.   AND THEN WE HAVE ON SLIDE 24 FROM THE SAME DOCUMENT, THIS

01:40:37 24   TYPE TALKING ABOUT SOMETHING CALLED A TOKEN RULE.

01:40:41 25   SO, MR. FISHER, IF WE COULD HIGHLIGHT THAT ON THE SCREEN.

01:40:45 1   Q.   WHAT IS THIS TYPE OF RULE?

01:40:47 2   A.   SO A TOKEN RULE IS A REFERENCE TO, WHEN YOU THINK ABOUT

01:40:51 3   THIS AS AN INDIVIDUAL WORD. SO IN THE PARSING LANGUAGE WE CALL

01:40:56 4   THE WORD, INDIVIDUAL WORDS THE USER ENTERS IN, WE CALL THEM

01:41:01 5   TOKENS.

01:41:01 6   Q.   OKAY. LET'S SEE IF WE CAN WALK THROUGH AT A VERY HIGH

01:41:04 7   LEVEL HOW YOU WOULD ADD A COMMAND IN THE ARISTA SYSTEM?

01:41:08 8   A.   SURE. SO WHAT I HAVE SHOWN ON THIS SLIDE ARE THE NAMES OF

01:41:12 9   SOME FUNCTIONS THAT ARE INSIDE THE SOURCE CODE. SO THESE REFER

01:41:16 10   TO PIECES OF CODE THAT ARE GOING TO BE EXECUTED DURING THE

01:41:20 11   PROCESS OF DEVELOPING THE COMMAND SET OF THE SYSTEM.

01:41:25 12   SO THE FIRST ONE HERE IS A COMMAND THAT'S CALLED ADD

01:41:29 13   COMMAND, WHICH SOUNDS INTUITIVE AND IT IS. AND IN THIS CASE,

01:41:33 14   THIS IS FOR WHAT'S CALLED THE SPANNING TREE PROTOCOL. THIS IS

01:41:38 15   FOUND IN THE FILE STP CLI.PY. AND THE ERROR MEANS AS A RESULT

01:41:45 16   OF EXECUTING THAT ADDITIONAL FUNCTION, ADDITIONAL FUNCTIONS GET

01:41:49 17   EXECUTED. AND ONE OF THOSE ADDITIONAL FUNCTIONS IS THE

01:41:51 18   FUNCTION "ADD COMMAND TO RULE." AND SO THIS WILL ADD A COMMAND

01:41:54 19   TO A RULE SET. AND THIS LATTER FUNCTION IS FOUND IN CLI

01:42:01 20   PARSER.PY.

01:42:02 21   AND SO THIS IS JUST A HIGH LEVEL OVERVIEW, BUT AS A RESULT

01:42:05 22   OF FOLLOWING THIS PROCESS, THE IDEA IS WE HAVE A NEW GENERIC

01:42:09 23   COMMAND THAT'S AVAILABLE TO THE USER TO THE ENTER INTO THIS

01:42:13 24   COMMAND-LINE INTERFACE ON THE ARISTA DEVICE.

01:42:15 25   Q.   SO WHAT HAPPENS ONCE A NEW COMMAND HAS BEEN ADDED INTO THE

01:42:18 1   ARISTA SYSTEM, WHAT HAPPENS WHEN A USER COMES ALONG AND ENTERS

01:42:23 2   THAT COMMAND THAT'S BEEN CONFIGURED INTO THE PARSER?

01:42:26 3   A.   SO THIS PROCESS IS A LITTLE MORE COMPLICATED. AND SO WE

01:42:30 4   HAVE THE SIX BOXES HERE. WE START WITH THE UPPER LEFT WITH

01:42:36 5   CLIINPUT.READLINE, AND THIS IS FOUND IN THE FILE CLI.PY. THIS

01:42:42 6   IS A FUNCTION THAT AS THE NAME SEEMS TO IMPLY, WILL READ IN A

01:42:46 7   LINE OF INPUT. AND A LINE OF INPUT MEANS ALL THE WORDS YOU

01:42:49 8   TYPE FOLLOWED BY ENTER.

01:42:51 9   THEN AFTER SOME STEPS, WE WILL INVOKE THE PARSER TO TRY

01:42:55 10   AND FIGURE OUT WHAT THE USER HAS JUST TYPED IN. AND THAT'S

01:42:59 11   FOUND IN THE FILE CLI PARSER.PY. AND THE PARSING CAN BE DONE

01:43:06 12   ITERATIVELY, A WORD AT A TIME -- OR SORRY, TRYING TO PARSE A

01:43:11 13   PARTICULAR COMMAND AT THE TIME. AND YOU WILL START WITH THE

01:43:12 14   FUNCTION THAT'S CALLED PARSE AND EXECUTE, WHICH IS FOUND IN CLI

01:43:17 15   PARSER.PY.

01:43:18 16   THE NEXT TWO FUNCTIONS ARE REALLY KEY. THE NEXT TWO WILL

01:43:23 17   BE EXECUTED MANY TIMES, POTENTIALLY DEPENDING ON HOW MUCH DATA

01:43:28 18   WAS INPUT BY THE USER.

01:43:31 19   SO THE NAME IS A LITTLE FUNNY. THE FIRST ONE IS CALLED OR

01:43:37 20   RULE.INHALE. INHALE HAPPENS TO BE THE TERM ARISTA USES FOR

01:43:42 21   PROCESSING, THINK OF IT AS THEIR INGESTING A WORD AND THEY ARE

01:43:45 22   NOW TRYING TO PROCESS IT. AND THAT'S FOUND IN CLI RULE.PY.

01:43:50 23   AND ONCE WE'VE -- AS PART OF THE PROCESSING OF AN

01:43:55 24   INDIVIDUAL WORD, WE WILL CALL A MORE DETAILED FUNCTION,

01:44:00 25   CHILD.INHALE. AND THE IDEA IS THAT AS WE ARE PROCESSING THESE

01:44:04 1   WORDS, THE SYSTEM WILL BUILD UP WHAT I WILL CALL SCORECARD,

01:44:08 2   IT'S A VARIABLE THAT'S CALLED CONTEXT.STATE. AND CONTEXT.STATE

01:44:14 3   IS GOING TO BE USED TO KEEP TRACK OF WHERE WE ARE IN THE PARSE

01:44:17 4   AND WHAT ARE ALL THE POSSIBLE COMMANDS THAT WE COULD BE

01:44:21 5   MATCHING.

01:44:22 6   AND THIS WILL BE A SCORECARD, WILL BE DEVELOPED FOR EVERY

01:44:25 7   WORD THAT IS PROCESSED OR INHALED.

01:44:30 8   SO, AS I SAY, THE TWO INHALE RULES WILL EXECUTE MULTIPLE

01:44:35 9   TIMES GOING THROUGH ALL THE WORDS THAT THE USER HAS INPUT

01:44:38 10 TRYING TO FIGURE OUT WHAT THE COMMAND IS, IF THAT PROCESS IS

01:44:41 11 SUCCESSFUL, WE THEN MOVE TO THE INVOKE VALUE FUNCTION, WHICH IS

01:44:46 12 ALSO FOUND IN CLI RULE.PY. AND THE IDEA IS THAT EVERY RULE

01:44:51 13 WILL HAVE AT LEAST ONE VALUE FUNCTION ASSOCIATED WITH IT.

01:44:55 14   AND WHAT A VALUE FUNCTION IS, IT'S AN INDICATION OF WHAT

01:44:58 15 THE GENERIC COMMAND IS, IT'S A FUNCTION THAT WILL BE EXECUTED

01:45:03 16 AS A WAY TO START EXECUTING THE PRESCRIBED COMMAND, THAT IS THE

01:45:08 17 COMMAND THAT'S SPECIFIC TO THE TOOL THAT THE USER WAS TRYING TO

01:45:12 18 USE.

01:45:12 19 Q.   OKAY.

01:45:13 20   MR. PAK: YOUR HONOR, AT THIS TIME, IF YOU CAN TAKE A

01:45:16 21 LOOK AT EXHIBIT 3623.

01:45:19 22 Q.   I BELIEVE THIS IS THE SOURCE CODE THAT YOU ANALYZED?

01:45:26 23 A.   YES.

01:45:28 24   MR. PAK: YOUR HONOR, WE WILL BE MOVING THIS IN UNDER

01:45:30 25 SEAL, BUT IT'S EXHIBIT 3625-A, IT'S A COMPILATION EXHIBIT.

01:45:34 1   THE COURT: ANY OBJECTION?

01:45:36 2   MR. KRISHNAN: NO OBJECTION.

01:45:36 3   THE COURT: IT WILL BE ADMITTED. ARE YOU SHOWING

01:45:38 4   THIS ON THE SCREEN?

01:45:40 5   MR. PAK: NO.

01:45:41 6   (PLAINTIFF'S EXHIBIT 3625-A WAS ADMITTED INTO EVIDENCE.)

01:45:42 7   BY MR. PAK:

01:45:43 8   Q.   SO WE CAN LEAVE THE SCREEN UP.

01:45:45 9   SO WE'VE DONE THE BACKGROUND TUTORIAL, DR. JEFFAY. WHAT

01:45:48 10   WE ARE GOING TO DO IS WE ARE GOING TO WALK THROUGH EACH ELEMENT

01:45:52 11   OF THE CLAIMS AND HAVE YOU PRESENT TO THE JURY THE EVIDENCE OF

01:45:55 12   INFRINGEMENT FOR EACH OF THESE ELEMENTS.

01:45:57 13   ARE YOU WITH ME?

01:45:58 14   A.   I'M JUST FINE.

01:45:59 15   Q.   GREAT. SO LET'S TAKE A LOOK AT METHOD, CLAIM 1, WHICH YOU

01:46:02 16   ALREADY INTRODUCED TO THE JURY. AND WHAT WE HAVE ON THE

01:46:05 17   LEFT-HAND SIDE, I BELIEVE, IS THE CLAIM LANGUAGE, HIGHLIGHTED,

01:46:08 18   SO WE ARE GOING TO FOCUS ON A PARTICULAR ELEMENT. AND ON THE

01:46:16 19   RIGHT-HAND SIDE, I BELIEVE IS YOUR EVIDENCE TO SUPPORT WHY THE

01:46:20 20   ELEMENT IS PRESENT IN THE CLAIM, CORRECT?

01:46:21 21   A.   CORRECT.

01:46:21 22   Q.   SO WE WILL WALK THROUGH THIS ANALYSIS WITH THE GUIDANCE OF

01:46:25 23   YOUR SLIDES.

01:46:26 24   CAN YOU TELL US WHAT EVIDENCE YOU FOUND FOR THE ELEMENT A

01:46:35 25   METHOD IN A PROCESSOR-BASED SYSTEM?

01:46:38 1   A.   SURE. SO THE CLAIM REQUIRES THAT THIS METHOD BE PERFORMED

01:46:42 2   IN A PROCESSOR-BASED SYSTEM. SO I HAVE TO SHOW YOU THAT THE

01:46:45 3   ARISTA DEVICE IS A PROCESSOR-BASED SYSTEM.

01:46:48 4   SO WHAT I'M RELYING ON HERE IS EXHIBIT 24 WHICH IS A DATA

01:46:52 5   SHEET FOR THE 7500 SERIES SWITCHES, THEY ARE SHOWN IN THE

01:46:57 6   PICTURE. AND THE DATA SHEET INDICATES THAT THESE DEVICES HAVE

01:47:01 7   A PROCESSOR, IN THIS CASE 2.6 GIGAHERTZ QUAD CORE PROCESSOR.

01:47:08 8   SO THIS IS EVIDENCE THAT THE METHOD WE ARE GOING TO TALK

01:47:10 9   ABOUT IS PERFORMED IN A PROCESSOR-BASED SYSTEM.

01:47:13 10   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE INTO

01:47:14 11   EVIDENCE EXHIBIT 24.

01:47:16 12   MR. KRISHNAN: NO OBJECTION.

01:47:17 13   THE COURT: IT WILL BE ADMITTED.

01:47:18 14   (PLAINTIFF'S EXHIBIT 24 WAS ADMITTED INTO EVIDENCE.)

01:47:18 15   BY MR. PAK:

01:47:18 16   Q.   LET'S TAKE A LOOK AT THE NEXT ELEMENT. CAN YOU TELL US

01:47:21 17   WHAT EVIDENCE YOU FOUND FOR CONFIGURE FOR EXECUTING A PLURALITY

01:47:26 18   OF MANAGEMENT PROGRAMS ACCORDING TO RESPECTIVE COMMAND FORMATS?

01:47:30 19   A.   SURE. SO THIS IS AN ARISTA DOCUMENT THAT IS, AGAIN, FROM

01:47:37 20   THIS GET HUB WEBSITE IN A PORTION OF THE WEBSITE DEDICATED TO

01:47:41 21   ARISTA, AND IT'S A DOCUMENT THAT'S ENTITLED UNDERSTANDING EOS

01:47:45 22   AND SYSDB.

01:47:48 23   AND WHAT WE CAN SEE HERE IS IN THE TEXT THAT'S AT THE

01:47:51 24   BOTTOM OF THE PAGE IT SAYS THAT EOS IS COMPOSED OF A NUMBER OF

01:47:55 25   PROCESSES CALLED AGENTS EACH PERFORMING A SPECIFIC ROLE.

01:47:57 1   AND THEN IT GOES ON TO SAY THAT THESE PROCESSES PERFORM

01:48:01 2   MANAGEMENT FUNCTIONS LIKE MANAGING THE HARDWARE AND CHIPS.

01:48:04 3   Q.   AND LET'S PAUSE THERE.

01:48:07 4   MR. FISHER, IF YOU COULD HIGHLIGHT AGENTS ON THE BOTTOM.

01:48:10 5   HOW DOES THAT RELATE TO THE COURT'S CONSTRUCTION OF MANAGEMENT

01:48:13 6   PROGRAMS.

01:48:13 7   A.   WELL, IT ALIGNS PERFECTLY BECAUSE THE COURT'S CONSTRUCTION

01:48:16 8   IS THAT A MANAGEMENT PROGRAM IS A TOOL OR AN AGENT, SO THESE

01:48:20 9   ARE CLEARLY AGENTS.

01:48:21 10   Q.   AND SO DID YOU FIND THAT THIS ELEMENT IS PRESENT?

01:48:30 11   A.   YES.

01:48:30 12   Q.   LET'S TAKE A LOOK AT THE NEXT PIECE OF EVIDENCE.

01:48:34 13   YOU UNDERSTAND -- YOU WERE HERE FOR MR. SWEENEY'S

01:48:37 14   TESTIMONY. WHAT WAS THE IMPORTANCE OF SOME OF THE TESTIMONY

01:48:40 15   YOU HEARD?

01:48:40 16   A.   WELL, THIS IS A QUOTE FROM THE TESTIMONY THAT WE HEARD IN

01:48:46 17   THE VIDEO. AND THE POINT HERE IS THAT HE'S ACKNOWLEDGING THAT

01:48:49 18   THE AGENTS IN EOS, THAT THEIR JOB IS TO MANAGE THE SWITCH, THAT

01:48:53 19   IS TO SAY THAT THEY ARE MANAGEMENT PROGRAMS.

01:48:56 20   Q.   OKAY. THEN -- SO LOOKING AT SLIDE 36, WERE YOU ABLE TO

01:49:02 21   SATISFY -- OR ACTUALLY BEFORE WE GET THERE, LET'S LOOK AT 35.

01:49:06 22   WITH RESPECT TO THE PROGRAMS, ACCORDING TO RESPECTIVE

01:49:09 23   COMMAND FORMATS, WERE YOU ABLE TO FIND EVIDENCE OF THAT

01:49:12 24   LIMITATION IN THE ACCUSED PRODUCTS?

01:49:15 25   A.   YES. AND WHAT I'M SHOWING HERE IS, FOR EXAMPLE, A COMMAND

01:49:20 1   CALLED SHOW OPEN FLOW, THAT A USER WOULD TYPE INTO THE SYSTEM.

01:49:24 2   SO YOU CAN SEE IT'S A VERY SIMPLE COMMAND.

01:49:26 3   AND THE FORMAT OF THE COMMAND THAT'S ACTUALLY GOING TO BE

01:49:30 4   EXECUTED BY THE AGENT IS SHOWN HERE AS WELL, AND YOU CAN SEE

01:49:34 5   THAT IT'S SPECIFIC TO THE TOOL BUT IT'S ALSO MUCH MORE

01:49:38 6   COMPLICATED. IT'S OPEN FLOW SHOW-MINUS SYS NAME, AND YOU CAN

01:49:47 7   SEE THE REST OF THE TEXT.

01:49:48 8   Q.   ON SLIDE 36 WERE YOU ABLE TO FIND THIS PREAMBLE ONE

01:49:52 9   SATISFIED?

01:49:53 10   A.   YES. I BELIEVE I'VE SHOWN THE EVIDENCE THAT EACH OF THE

01:49:55 11   ASPECTS OF THE PREAMBLE IS PRESENT IN THE ARISTA DEVICES.

01:49:59 12   Q.   AND IF WE GO TO THE NEXT ELEMENT, 1.1, RECEIVING A GENERIC

01:50:04 13   COMMAND FROM THE USER. WERE YOU ABLE TO FIND EVIDENCE OF THAT

01:50:06 14   IN THE ARISTA PRODUCTS?

01:50:08 15   A.   YES. AND HERE I'M RELYING ON EXHIBIT 13 WHICH IS A USER

01:50:13 16   MANUAL FOR ARISTA EOS. AND THIS IS FROM PAGE 85 THAT DESCRIBES

01:50:20 17   THE COMMAND-LINE INTERFACE AND SIMPLY SAYS THAT EOS HAS AN

01:50:23 18   INTERFACE FOR ENTERING COMMANDS THAT CONTROL THE SWITCH.

01:50:25 19   SO THE EOS IS CLEARLY CAPABLE OF RECEIVING A GENERIC

01:50:31 20   COMMAND FROM THE USER.

01:50:31 21   Q.   AND SO WERE YOU ABLE TO FIND EXAMPLES OF GENERIC COMMANDS

01:50:37 22   IN THE COURT'S CLAIM CONSTRUCTION IN THE ACCUSED PRODUCTS?

01:50:39 23   A.   YES.

01:50:40 24   Q.   AND WHAT ARE SOME OF THOSE EXAMPLES?

01:50:42 25   A.   SO THE EXAMPLE THAT'S LISTED HERE IS -- SORRY. FOR

01:50:46 1   EXAMPLE, WE COULD LOOK AT THE 13 SLIDES BACK, THE SHOW OPEN

01:50:50 2   FLOW.

01:50:51 3   Q.   OKAY.

01:50:53 4   A.   AND ANOTHER ONE MIGHT BE SHOW SNMP MIB.

01:50:56 5   Q.   AND IF WE LOOK AT THE NEXT SLIDE 40, ARE THESE EXAMPLES OF

01:51:05 6   GENERIC COMMANDS, ACCORDING TO THE COURT'S CONSTRUCTION, THAT

01:51:07 7   SATISFY THE CLAIM LIMITATIONS?

01:51:08 8   A.   YES.

01:51:09 9   MR. PAK: AND I KNOW YOU HAVE MANY OF THEM ON THE

01:51:13 10   SCREEN, BUT I BELIEVE WE HAVE AN AGREEMENT, YOUR HONOR, TO

01:51:15 11   SUBMIT THIS AS A SUMMARY EXHIBIT.

01:51:19 12   THE COURT: OKAY.   DOES IT HAVE A NUMBER?

01:51:22 13   MR. PAK: AND THE SUMMARY EXHIBIT WILL BE 599, AND I

01:51:25 14   WOULD LIKE TO MOVE THAT INTO EVIDENCE.

01:51:27 15   MR. KRISHNAN: NO OBJECTION, YOUR HONOR.

01:51:28 16   THE COURT: IT WILL BE ADMITTED.

01:51:30 17   (PLAINTIFF'S EXHIBIT 599 WAS ADMITTED INTO EVIDENCE.)

01:51:30 18   BY MR. PAK:

01:51:30 19   Q.   AND, AGAIN, JUST TO BE CLEAR, THIS PATENT IS NOT ABOUT THE

01:51:34 20   SPECIFIC COMMAND SYNTAX OR THE EXPRESSIONS ON THE SCREEN, IT'S

01:51:37 21   ABOUT THE CODE THAT'S RUNNING IN THE PARSER; IS THAT CORRECT?

01:51:40 22   A.   CORRECT, IT'S THE METHOD.

01:51:41 23   Q.   THANK YOU.   AND SO WERE YOU ABLE TO SATISFY YOURSELF THAT

01:51:46 24   1.1 OF CLAIM 1 WAS SATISFIED?

01:51:48 25   A.   YES, I THINK I'VE SHOWN YOU EVIDENCE THAT 1.1 IS

01:51:52 1   SATISFIED.

01:51:52 2   Q.   OKAY. GO TO THE NEXT ELEMENT HERE. WERE YOU ABLE TO FIND

01:51:55 3   A COMMAND PARSE TREE?

01:51:57 4   A.   I WAS.

01:51:58 5   Q.   OKAY. AND WHAT'S THE SIGNIFICANCE OF THIS SLIDE, 46?

01:52:03 6   A.   THIS IS THE SLIDE, THIS IS THE FIGURE, RATHER, THAT

01:52:06 7   MR. SWEENEY DREW IN HIS DEPOSITION, AND WE SAW HIM DRAWING IT

01:52:12 8   ON THE VIDEO.

01:52:13 9   AND THIS IS HIS REPRESENTATION OF THE PARSE TREE THAT

01:52:17 10   EXISTS IN EOS, DEMONSTRATING THAT THERE IS A HIERARCHICAL DATA

01:52:24 11   STRUCTURE IN EOS.

01:52:25 12   Q.   NOW, IT DOESN'T LOOK A TREE IN THIS PARTICULAR FIGURE?

01:52:28 13   A.   WELL, IT DOESN'T LOOK LIKE THE TRADITIONAL REPRESENTATION

01:52:30 14   OF A TREE, BUT IT IS A TREE. AND I CAN SHOW YOU THIS WITH THE

01:52:33 15   NEXT SLIDE. WHAT I'M SHOWING HERE AT THE TOP IS THE FIGURE

01:52:38 16   MR. SWEENEY DREW.

01:52:40 17   AND ON THE BOTTOM IS A FIGURE FROM A VERY WELL-KNOWN

01:52:43 18   COMPUTER SCIENCE TEXTBOOK CALLED "THE ART OF COMPUTER

01:52:47 19   PROGRAMMING," WHICH I UNDERSTAND IS EXHIBIT 4493.

01:52:50 20   AND IT'S SIMPLY SAYING THAT THERE'S OTHER WAYS THAT YOU

01:52:53 21   CAN DRAW TREES AND NOTICE THAT PART OF THE FIGURE IS EXACTLY

01:52:57 22   THIS SORT OF NEST OF CIRCLE DIAGRAM THAT MR. SWEENEY DREW.

01:53:03 23   Q.   AND LET'S HAVE MR. FISHER HIGHLIGHT THAT, ON THE BOTTOM

01:53:06 24   FIGURE 20 SAYS FURTHER WAYS TO SHOW TREE STRUCTURE, A NESTED

01:53:12 25   SET. IS THAT WHAT YOU EVER REFERRING TO?

01:53:14 1   A.   CORRECT.

01:53:14 2   Q.   AND WHAT DO WE HAVE HERE ON SLIDE 49?

01:53:17 3   A.   SO THIS IS A MORE TRADITIONAL RENDERING OF THE TREE. IT

01:53:22 4   HAS THE SAME INFORMATION AND CAPTURES THE SAME RELATIONSHIPS

01:53:25 5   AND THIS ONE I THINK WE CAN APPRECIATE LOOKS MORE LIKE A TREE.

01:53:29 6   Q.   OKAY. SO HAVE YOU CHANGED THE STRUCTURE OF THE TREE IN

01:53:32 7   ANY WAY BY VISUALIZING IT THIS WAY?

01:53:34 8   A.   NO, IT'S THE SAME INFORMATION JUST REPRESENTED

01:53:37 9   DIFFERENTLY.

01:53:38 10   Q.   LET'S TAKE A LOOK AT HOW THAT COMPARES TO FIGURE 2 OF THE

01:53:42 11   '526 PATENT?

01:53:43 12   A.   SURE. WE CAN SEE THEY ARE BOTH TRADITIONAL

01:53:45 13   REPRESENTATIONS OF TREE.

01:53:46 14   Q.   IS IT HIERARCHICAL?

01:53:47 15   A.   IT IS HIERARCHICAL.

01:53:49 16   Q.   IS IT A DATA STRUCTURE?

01:53:51 17   A.   MR. SWEENEY HAS TOLD US IT'S A DATA STRUCTURE IN EOS.

01:53:54 18   Q.   SO WERE YOU ABLE TO SATISFY YOURSELF THAT ELEMENT 1.2 IS

01:53:58 19   PRESENT IN THE ACCUSED PRODUCTS?

01:53:59 20   A.   YES.

01:54:00 21   Q.   AND LET'S LOOK AT THE NEXT ELEMENT WHICH IS THE CLAIM

01:54:05 22   LIMITATION, THE COMMAND PARSE TREE HAVING ELEMENTS, EACH

01:54:10 23   SPECIFYING AT LEAST ONE CORRESPONDING GENERIC COMMAND COMPONENT

01:54:13 24   AND A CORRESPONDING OF AT LEAST ONE COMMAND ACTION VALUE. DO

01:54:17 25   YOU SEE THAT?

01:54:18   1   A.   I DO.

01:54:18   2   Q.   AND I THINK YOU ALREADY WALKED US THROUGH THE ACTUAL

01:54:21   3   CONSTRUCTION FROM HER HONOR ON THIS PHRASE; IS THAT RIGHT?

01:54:24   4   A.   I DID.

01:54:25   5   Q.   AND WERE YOU ABLE TO APPLY THIS EXACT CONSTRUCTION TO THE

01:54:28   6   ANALYSIS THAT YOU DID AGAINST THE ACCUSED PRODUCTS?

01:54:31   7   A.   YES.

01:54:31   8   Q.   ALL RIGHT. SO LET'S HAVE YOU DEMONSTRATE THAT ANALYSIS.

01:54:35   9   WHAT ARE WE LOOKING AT ON SLIDE 54 HERE?

01:54:38   10   A.   SO LET ME GIVE YOU A LITTLE SETUP HERE. THIS IS A FIGURE

01:54:41   11   THAT'S SIMILAR TO THE ONE THAT WE SAW EARLIER THAT WAS

01:54:50   12   ILLUSTRATING AN EXAMPLE FROM THE PATENT.

01:54:52   13   THIS IS NOW GOING TO ILLUSTRATE AN ASPECT OF THE OPERATION

01:54:55   14   OF THE EOS SYSTEM. SO AS I MENTIONED, WHEN I WAS TALKING ABOUT

01:55:00   15   THE CODE FOR PARSING, WHEN WE ARE EXECUTING THESE INHALE

01:55:05   16   FUNCTIONS, WHEN WE ARE LOOKING AT INDIVIDUAL WORDS, THINGS THAT

01:55:11   17   I AM GOING TO SAY ARE GENERIC COMMAND COMPONENTS, THE SYSTEM,

01:55:14   18   U.S. SYSTEM WILL HAVE A VARIABLE CALLED CONTEXT.STATE.

01:55:18   19   AND CONTEXT.STATE IS THE SCOREBOARD. IT'S TRYING TO

01:55:21   20   REPRESENT WHAT'S GOING ON IN THE SYSTEM, WHERE WE ARE, AND IT'S

01:55:25   21   GOING TO KEEP A LIST OF ALL THE RULES THAT WE COULD POTENTIALLY

01:55:28   22   MATCH AT THIS POINT, AND FOR EACH OF THOSE RULES IT'S GOING TO

01:55:32   23   KEEP TRACK OF WHAT WE WILL CALL THE COMMAND ACTION VALUE FOR

01:55:36   24   THOSE PARTICULAR RULES.

01:55:38   25   SO FOR EACH WORD THAT GETS ENTERED, CONTEXT.STATE IS GOING

01:55:42 1   TO HAVE A LIST OF ALL THE POSSIBLE FUNCTIONS THAT COULD

01:55:46 2   POSSIBLY BE EXECUTED AT THIS POINT.

01:55:49 3   SO WHEN WE TYPE IN THE FIRST WORD SHOW, WE WORK OUR WAY

01:55:54 4   DOWN THE PARSE TO THESE INHALE FUNCTIONS, AND AT THIS POINT

01:55:57 5   BECAUSE THERE'S ONLY ONE WORD, THERE'S POSSIBLY A LARGE NUMBER

01:56:00 6   OF COMMANDS THAT WE COULD MATCH, AND WHAT I'M ILLUSTRATING HERE

01:56:04 7   IS CONTEXT.STATE, KEEPING TRACK OF ALL THE POSSIBLE COMMAND

01:56:09 8   ACTION VALUES. THESE THINGS CALLED VALUE FUNCTIONS, THAT COULD

01:56:12 9   BE EXECUTED AT THIS POINT.

01:56:14 10   AND AS THE USER CONTINUES AND ENTERS IN MORE DATA, SO IF

01:56:18 11 WE COULD JUST RUN THE ANIMATION TO THE NEXT STEP, NOW THE

01:56:23 12 SYSTEM HAS SEEN MORE INFORMATION AND NOW IT KNOWS MORE ABOUT

01:56:27 13 WHAT POTENTIALLY THIS COMMAND COULD BE, AND SO NOW THERE ARE

01:56:30 14 FEWER OPTIONS FOR WHAT THE COMMAND COULD BE.

01:56:33 15   SO THE CONTEXT.STATE THAT WOULD BE ASSOCIATED WITH THE

01:56:36 16 WORD OPENFLOW HAS FEWER VALUES, NOW HAS FEWER COMMAND ACTION

01:56:41 17 VALUES.

01:56:42 18   AND IF WE GO TO THE THIRD STEP THAT, ONCE THE PARSER SEES

01:56:45 19 THE LAST WORD, AT THIS POINT IT'S NOW IDENTIFIED A COMMAND AND

01:56:50 20 IT'S REFINED ITS SCOREBOARD TO NOW HAVE A SINGLE COMMAND ACTION

01:56:55 21 VALUE, AND THAT'S THE COMMAND ACTION VALUE OR THE VALUE

01:57:00 22 FUNCTION THAT WILL BE EXECUTED.

01:57:01 23 Q.   SO JUST TO REMIND THE JURY, WHAT WE SAW WAS WHEN THE SHOW

01:57:05 24   TOKEN OR WORD IS INHALED AND PROCESSED, YOU HAD FIVE COMMAND

01:57:08 25   ACTION VALUES IN THE SCOREBOARD?

01:57:10 1   A.   CORRECT, BECAUSE WE DIDN'T KNOW, THERE WAS LOTS OF

01:57:13 2   POSSIBILITIES FOR WHAT SHOW COULD ULTIMATELY BE.

01:57:16 3   Q.   THE NEXT WORD CAME ALONG AND YOU HAD OPEN FLOW. AND THIS

01:57:19 4   TIME THAT SET OF COMMAND ACTION VALUES WAS REDUCED TO THREE

01:57:23 5   VALUES?

01:57:23 6   A.   CORRECT, BECAUSE NOW WE KNOW THAT SOME OF THE COMPONENTS

01:57:27 7   CAN'T EXIST.

01:57:28 8   Q.   NOW, WE HAVE THE LAST WORD AND BINGO, WE GET MATCH, AND

01:57:32 9   YOU ARE JUST DOWN TO ONE COMMAND ACTION VALUE; IS THAT RIGHT?

01:57:36 10   A.   CORRECT.

01:57:36 11   Q.   AND DOES HER HONOR'S CONSTRUCTION ALLOW YOU TO HAVE MORE

01:57:39 12   THAN ONE COMMAND ACTION VALUE ASSOCIATED WITH EACH TOKEN AS IT

01:57:43 13   COMES IN?

01:57:44 14   A.   YES, IT DOES.

01:57:45 15   Q.   SO WITH THAT, WERE YOU ABLE TO SATISFY YOURSELF THAT

01:57:48 16   ELEMENT 1.3 IS PRESENT IN THE ACCUSED PRODUCTS?

01:57:52 17   A.   YES.

01:57:52 18   Q.   ALL RIGHT. AND LET'S GO TO THE LAST COUPLE OF STEPS HERE.

01:57:55 19   SO WE HAVE YOU, AGAIN, TYPING ON THE LEFT-HAND SIDE AND

01:57:59 20   THIS TIME IT'S FOR VALIDATING A STEP, INCLUDING IDENTIFYING ONE

01:58:05 21   OF THE ELEMENTS AS A BEST MATCH RELATIVE TO THE GENERIC

01:58:09 22   COMMAND.

01:58:10 23   AND WERE YOU ABLE TO FIND EVIDENCE RELATING TO THIS

01:58:13 24   PARTICULAR LIMITATION?

01:58:15 25   A.   YES. SO THE PREVIOUS SLIDE WAS JUST AN EXAMPLE OF TYPING

01:58:18 1   IN A VALID COMMAND TO SHOW THAT IT OBVIOUSLY RECOGNIZES IT AS A

01:58:23 2   VALID COMMAND. BUT THE COMMANDS DON'T HAVE TO BE COMPLETE.

01:58:26 3   SO WHAT I'M SHOWING HERE IS AN EXCERPT FROM A BOOK CALLED

01:58:29 4   "ARISTA WARRIOR," WHICH IS EXHIBIT 31, AND HERE WHAT IT'S

01:58:35 5   SAYING IS THAT JUST LIKE IOS, WHICH IS THE CISCO OPERATING

01:58:39 6   SYSTEM, YOU CAN EXECUTE WHAT ARE CALLED TRUNCATED COMMANDS.

01:58:44 7   SO IF WE LOOK DOWN AT THE VERY BOTTOM OF THIS CALLOUT

01:58:48 8   HERE, IT'S SAYING THAT, FOR EXAMPLE, IN THE CASE OF TYPING THE

01:58:51 9   COMMAND EXIT, YOU CAN TYPE EX, WHICH IS NOT THE ENTIRE COMMAND,

01:58:57 10   HIT ENTER AND THE SYSTEM WILL FIGURE OUT THAT EX MEANT EXIT

01:59:01 11   BECAUSE IT'S A NONAMBIGUOUS COMMAND.

01:59:03 12   Q.   COULD YOU HIGHLIGHT THAT, MR. FISHER, ON THE SCREEN, EX.

01:59:06 13   SO INSTEAD OF TYPING IN THE WHOLE PHRASE EXIT, YOU WERE

01:59:09 14   JUST TYPING IN EX AND THE SYSTEM IS SMART ENOUGH TO KNOW IT'S A

01:59:13 15   BEST MATCH.

01:59:13 16   A.   CORRECT.

01:59:15 17   MR. PAK: SO AT THIS TIME, YOUR HONOR, I WOULD LIKE

01:59:16 18   TO MOVE IN EXHIBIT 31.

01:59:19 19   THE COURT: ANY OBJECTION?

01:59:20 20   MR. KRISHNAN: NO OBJECTION.

01:59:21 21   THE COURT: IT WILL BE ADMITTED.

01:59:23 22   (PLAINTIFF'S EXHIBIT 31 WAS ADMITTED INTO EVIDENCE.)

01:59:23 23   BY MR. PAK:

01:59:23 24   Q.   AND ON PAGE 60 TO 61 OF THE SAME BOOK "THE ARISTA

01:59:27 25   WARRIOR," HOW DOES THAT PAGE REPORT TO YOUR INFRINGEMENT

01:59:30   1   ANALYSIS?

01:59:30   2   A.   THIS JUST SIMPLY SHOWS ANOTHER TYPE OF BEST MATCH THAT EOS

01:59:34   3   IS CAPABLE OF DOING.

01:59:36   4   IF YOU ARE TYPING IN A COMMAND AND YOU FORGET THE EXACT

01:59:40   5   SYNTAX, YOU CAN TYPE QUESTION MARK AND IT WILL PRESENT YOU WITH

01:59:43   6   A LIST OF POSSIBILITIES.

01:59:45   7   SO IT'S ABLE TO MATCH AT LEAST AT THE LEVEL OF KNOWING

01:59:48   8   WHAT ALL THE POSSIBILITIES ARE. AND IN THE EVENT THAT THERE'S

01:59:52   9   ONLY ONE POSSIBILITY, YOU CAN HIT THE TAB KEY AND IT WILL

01:59:56   10   COMPLETE THE COMMAND FOR YOU AS SHOWN IN THE MIDDLE OF THE BOX.

01:59:59   11   Q.   AND IS THAT CALLED TAB COMPLETION SOMETIMES?

02:00:02   12   A.   AND THAT'S CALLED TAB COMPLETION.

02:00:04   13   Q.   OKAY. AND SO WERE YOU ABLE TO SATISFY YOURSELF THAT

02:00:07   14   ELEMENT 1.4 IS PRESENT IN THE ACCUSED SYSTEMS?

02:00:10   15   A.   YES.

02:00:11   16   Q.   OKAY. AND WE ARE NOW ALMOST DONE. WE WILL GET TO THE

02:00:15   17   LAST ONE WHICH IS ISSUING A PRESCRIBED COMMAND OF A SELECTED

02:00:21   18   ONE OF THE MANAGEMENT PROGRAMS ACCORDING TO THE CORRESPONDING

02:00:24   19   COMMAND FORMAT BASED ON THE IDENTIFIED ONE ELEMENT.

02:00:27   20   AND HERE WHAT ARE WE SEEING IN THE FIRST COLUMN, SHOW OPEN

02:00:31   21   FLOW?

02:00:31   22   A.   SO WHAT I'VE DONE HERE IS ANALYZE THE CODE TO DETERMINE

02:00:35   23   WHAT THE ACTUAL COMMANDS THAT WILL BE EXECUTED BY AGENTS IN THE

02:00:41   24   EOS PRODUCTS.

02:00:41   25   SO THE GENERIC COMMAND ON THE LEFT COLUMN IS WHAT THE USER

02:00:44   1   TYPES, THAT'S THE SIMPLIFIED SYNTAX. AND WHAT'S GOING TO BE

02:00:52   2   EXECUTING IS THE COMMAND IN THE CENTER. AND THE SUPPORT FOR

02:00:54   3   THIS IS SHOWN IN THE SOURCE CODE FILES ON THE RIGHT.

02:00:55   4   Q.   AND ON THE RIGHT IT SAYS PRESCRIBED COMMAND, WHAT'S THE

02:00:59   5   CORRESPONDING PRESCRIBED COMMAND FOR THE COMMAND SHOW OPENFLOW?

02:01:05   6   A.   PRESCRIBED COMMAND IS OPENFLOW SHOW.

02:01:07   7   Q.   OKAY. AND THEN WHAT ARE SOME OF THESE THINGS WITH THE

02:01:10   8   LITTLE DASHES AND THE BRACKETS, WHAT IS THAT?

02:01:12   9   A.   SO THAT'S SOME KIND OF COMPUTER ARCANE, BUT THOSE ARE

02:01:17 10   BASICALLY WHAT WE CALL ARGUMENTS OR PARAMETERS TO THE COMMAND.

02:01:20 11   SO THE COMMAND IS "OPENFLOW SHOW" AND YOU CAN SPECIFY

02:01:23 12   ADDITIONAL INFORMATION TO THE COMMAND.

02:01:26 13   Q.   SO THOSE WOULD BE THINGS THE USER CAN TYPE IN?

02:01:29 14   A.   YES, THE USER HAS TO TYPE THOSE IN.

02:01:31 15   Q.   SO WE HAVE A MULTIWORD COMMAND, "SHOW OPENFLOW" THAT GETS

02:01:39 16   MAPPED TO A SINGLE WORD COMMAND "OPENFLOW SHOW" FOR THE

02:01:43 17   PARTICULAR TOOL; IS THAT TRUE?

02:01:45 18   A.   THAT'S CORRECT.

02:01:46 19   Q.   AND THEN YOU GAVE SOME OTHER EXAMPLES OF THESE SIMILAR

02:01:49 20   TYPES OF MAPPINGS?

02:01:50 21   A.   THAT'S CORRECT.

02:01:51 22   Q.   AND LET'S TAKE A LOOK AT SOME MORE EXAMPLES. SO IF I LOOK

02:01:54 23   AT SLIDE 60, AND THIS IS ALL PART OF YOUR SUMMARY EXHIBIT THAT

02:01:59 24   HAS BEEN ADMITTED INTO EVIDENCE, AND THIS IS INTERESTING, SO I

02:02:04 25   LOOK AT, FOR EXAMPLE, SHOW TECH-SUPPORT.

02:02:09 1   DO YOU SEE THAT?

02:02:10 2   A.   I DO.

02:02:11 3   Q.   SO THAT'S THE COMMAND THAT'S SHOWN TO THE USER IN THE

02:02:14 4   ARISTA SYSTEM; IS THAT RIGHT?

02:02:14 5   A.   THAT'S WHAT THE USER CAN TYPE.

02:02:16 6   Q.   BUT THE PRESCRIBED COMMAND FOR THE SAME FUNCTIONS IN THE

02:02:19 7   TOOL THAT MAY HAVE BEEN DEVELOPED BY SOMEBODY ELSE, WHAT IS

02:02:23 8   THAT PRESCRIBE COMMAND?

02:02:24 9   A.   WELL, WE CAN SEE IT'S PRETTY LONG AND COMPLEX WITH LOTS OF

02:02:28 10   POTENTIAL ARGUMENTS, FAST CLI, THE MINUS P OPTION, THE MINUS

02:02:36 11   MINUS DISABLE AND SO ON.

02:02:37 12   Q.   WHY IS IT THE CASE THAT ONE SET OF ENGINEERS, THE ARISTA

02:02:41 13   SET OF ENGINEERS DECIDED TO USE SHOW TECH-SUPPORT AND MAYBE

02:02:44 14   ANOTHER SET OF ENGINEERS AT A DIFFERENT COMPANY CHOSE THE WORD

02:02:47 15   "FAST CLI?"

02:02:48 16   A.   WELL, THEY WERE HAVING DIFFERENT TASKS. I MEAN, THEY ARE

02:02:52 17   UNDOUBTEDLY DEVELOPED INDEPENDENTLY AND THEY MADE INDEPENDENT

02:02:55 18   DECISIONS AS TO HOW DESIGN THEIR INTERFACE.

02:02:58 19   Q.   IS THAT CONSISTENT WITH YOUR UNDERSTANDING OF HOW USER

02:03:00 20   INTERFACES ARE DESIGNED?

02:03:01 21   A.   YES, ABSOLUTELY.

02:03:02 22   Q.   NOW, LET'S LOOK AT THE NEXT EXAMPLE. SHOW PLATFORM PKT IS

02:03:08 23   THE COMMAND IN THE ARISTA SYSTEM. WHAT'S THE CORRESPONDING

02:03:12 24   COMMAND THAT WAS DEVELOPED IN THE TOOL THAT IT TALKS TO?

02:03:15 25   A.   SO THIS ONE IS ACTUALLY A LITTLE SIMPLER, IT'S JUST FAB

02:03:19 1   DUMP.

02:03:19 2   Q.   OKAY. SO FAB DUMP IS DOING THE SAME THING AS SHOW

02:03:23 3   PLATFORM PKT?

02:03:25 4   A.   CORRECT.

02:03:26 5   Q.   AND LET'S GO TO THE NEXT SLIDE.

02:03:32 6   YOU SHOW SNMP MIB. THAT'S ONE OF THE COMMANDS YOU SHOWED

02:03:38 7   US; IS THAT CORRECT?

02:03:39 8   A.   THAT'S CORRECT.

02:03:39 9   Q.   AND THEN IF YOU LOOK AT HOW THAT SAME FUNCTION IS

02:03:42 10   PERFORMED BY A DIFFERENT CLI COMMAND, WHAT IS THE DIFFERENT CLI

02:03:51 11   COMMAND YOU'VE IDENTIFIED?

02:03:51 12   A.   THE PRESCRIBED COMMAND, THE THING THAT COMES OUT AT THE

02:03:54 13   BACKEND IS SNMP BULK WALK WITH ALL OF THESE FOLLOWING

02:03:58 14   ARGUMENTS.

02:03:59 15   Q.   OKAY. LET'S LOOK AT SOME MORE EXAMPLES.

02:04:02 16   SLIDE 62. CLOCK SET, THAT'S THE COMMAND IN THE ARISTA

02:04:05 17   SYSTEM; IS THAT CORRECT?

02:04:06 18   A.   THAT'S CORRECT.

02:04:07 19   Q.   AND WHAT'S THE SET OF COMMANDS THAT ANOTHER SET OF

02:04:11 20   ENGINEERS DESIGNED FOR THE SAME FUNCTIONALITY IN THE DIFFERENT

02:04:14 21   TOOL?

02:04:14 22   A.   SO THIS ONE WILL ACTUALLY REQUIRE TWO COMMANDS TO BE

02:04:18 23   EXECUTED, THE DATA COMMAND FOLLOWED BY THE/SBIN/HWCLOCK

02:04:25 24   COMMAND.

02:04:25 25   Q.   AND, AGAIN, CAN YOU EXPLAIN TO US WHY DIFFERENT ENGINEERS

02:04:28 1   CAME TO DIFFERENT VIEWS ON COMING UP WITH THE COMMAND

02:04:33 2   EXPRESSION FOR SETTING A CLOCK?

02:04:35 3   A.   WELL, THEY MIGHT HAVE HAD DIFFERENT PURPOSES FOR DESIGNING

02:04:40 4   THEIR COMMANDS. THESE TWO COMMANDS ARE PROBABLY INDEPENDENT

02:04:45 5   COMMANDS, AND THE DESIGNER FOR THE EOS REALIZED WE COULD

02:04:51 6   COMBINE THEM AND CREATE A NEW COMMAND AND GIVE IT A SIMPLER

02:04:54 7   NAME.

02:04:54 8   SO ALL OF THE DESIGNERS OF THESE INTERFACES ARE MAKING

02:04:57 9   THEIR OWN DECISIONS ABOUT HOW TO EXPRESS THE INTERFACE FOR

02:05:00 10   THEIR PARTICULAR TOOL.

02:05:01 11   Q.   LOOKING AT ELEMENT 1.5, WERE YOU ABLE TO SATISFY YOURSELF

02:05:05 12   THAT THAT ELEMENT IS SATISFIED IN THE ACCUSED PRODUCTS?

02:05:07 13   A.   YES.

02:05:08 14   Q.   GREAT. SO AT THIS POINT HAVE YOU PROVIDED ALL EVIDENCE OF

02:05:11 15   INFRINGEMENT FOR CLAIM 1?

02:05:13 16   A.   YES.

02:05:14 17   Q.   OKAY. SO IN YOUR OPINION, DO YOU BELIEVE THAT CLAIM 1 IS

02:05:17 18   INFRINGED BY THE ACCUSED EOS PRODUCTS AND ARISTA PRODUCTS?

02:05:21 19   A.   I DO.

02:05:22 20   Q.   SO LET'S LOOK AT CLAIM 14. THIS ONE WILL GO A LOT FASTER

02:05:27 21   BECAUSE IT HAS THE SAME LIMITATIONS BUT IT'S IN A DIFFERENT

02:05:30 22   FORMAT; IS THAT RIGHT?

02:05:31 23   A.   THAT'S RIGHT.

02:05:32 24   Q.   THIS ONE IS THE COMPUTER READABLE MEDIUM CLAIM; CORRECT?

02:05:35 25   A.   YES.

02:05:35 1   Q.   SO THIS TIME WHAT I'M GOING TO DO IS JUST FOCUS ON THE

02:05:41 2   LIMITATIONS THAT SHOW THE DIFFERENT LIMITATIONS OF THIS CLAIM

02:05:45 3   VERSUS CLAIM 1. ARE YOU WITH ME?

02:05:47 4   A.   YES.

02:05:47 5   Q.   SO LET'S LOOK AT SLIDE 68. WERE YOU ABLE TO FIND A

02:05:52 6   COMPUTER READABLE MEDIUM THAT HAS STORED SEQUENCES OF

02:05:56 7   INSTRUCTIONS FOR EXECUTING A PLURALITY OF MANAGEMENT PROGRAMS

02:06:00 8   ACCORDING TO RESPECTIVE COMMAND FORMATS, THE SEQUENCE OF

02:06:04 9   INSTRUCTIONS INCLUDING INSTRUCTIONS FOR PERFORMING THE STEPS

02:06:07 10   OF. THOSE ARE THE SAME STEPS?

02:06:09 11   A.   YES. SO WHAT I'M SHOWING HERE IS AGAIN A FIGURE FROM

02:06:12 12   THE -- THE SAME FIGURE FROM EXHIBIT 24, THE DATA SHEET FOR THE

02:06:16 13   700 SERIES SWITCHES, AND NOW FOCUSSING ON THE TWO ELEMENTS

02:06:20 14   BELOW PROCESSOR TO SIMPLY SHOW THAT THE SYSTEM HAS A SYSTEM

02:06:23 15   MEMORY AND FLASH STORAGE MEMORY, WHICH ARE BOTH COMPUTABLE

02:06:29 16   READABLE MEDIUM.

02:06:29 17   AND THESE ARE WHERE THE INSTRUCTIONS THAT WOULD PERFORM

02:06:33 18   THE STEPS THAT WE HAVE JUST SPOKEN ABOUT WOULD BE STORED.

02:06:36 19   Q.   AND CAN YOU JUST CONFIRM FOR THE JURY THAT WE ARE LOOKING

02:06:39 20   AT THE SAME SET OF STEPS FOR CLAIM 1 THAT WE ANALYZED VERSUS

02:06:44 21   CLAIM 14 THAT WE ARE ANALYZING NOW?

02:06:46 22   A.   YES. SO THIS CARTOON JUST SIMPLY ILLUSTRATES THAT THE

02:06:49 23   STEPS ARE EXACTLY -- I BELIEVE THEY ARE WORD FOR WORD EXACTLY

02:06:53 24   THE SAME.

02:06:53 25   Q.   SO WOULD ALL THE EVIDENCE AND ANALYSIS THAT YOU PRESENTED

02:06:56   1   FOR CLAIM 1 APPLY EQUALLY TO CLAIM 14?

02:06:58   2   A.   YES.

02:06:59   3   Q.   OKAY. SO WERE YOU ABLE TO SATISFY YOURSELF AGAIN THAT

02:07:02   4   CLAIM 14 IS INFRINGED BY ALL OF THE ACCUSED ARISTA PRODUCTS?

02:07:06   5   A.   YES.

02:07:07   6   Q.   OKAY. LET ME SHOW YOU JUST A FEW OF THE EVIDENCE THAT

02:07:15   7   YOU'VE SEEN. THIS IS EXHIBIT 0034.

02:07:20   8   HOW DOES ARISTA MARKET OR EXPLAIN THE VALUE OF THE ACCUSED

02:07:25   9   TECHNOLOGY, SPECIFICALLY THE SYSDB TECHNOLOGY?

02:07:31 10   A.   SO THIS IS A DOCUMENT PRODUCED BY ARISTA THAT'S TALKING

02:07:34 11   ABOUT THEIR OPERATING SYSTEM, EOS.

02:07:36 12   AND HERE WHAT IT'S DOING IS IT'S TOUTING THE BENEFITS OF

02:07:40 13   THEIR AGENT ARCHITECTURE. AND THE AGENTS ARE A KEY PART OF THE

02:07:45 14   INFRINGING TECHNOLOGY FOR THE '526 PATENT.

02:07:48 15   AND IT'S SIMPLY SAYING THAT BECAUSE EOS HAS THIS PROTECTED

02:07:53 16   ENVIRONMENT CONSISTENT OF SUBSYSTEMS AND AGENTS, YOU CAN RUN

02:07:58 17   VALIDATED THIRD PARTY AGENTS. SO THERE'S A BENEFIT TO THEIR

02:08:01 18   SYSDB ARCHITECTURE.

02:08:03 19   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE EXHIBIT 34

02:08:05 20   INTO EVIDENCE.

02:08:06 21   MR. KRISHNAN: NO OBJECTION.

02:08:07 22   THE COURT: IT WILL BE ADMITTED.

02:08:08 23   (PLAINTIFF'S EXHIBIT 34 WAS ADMITTED INTO EVIDENCE.)

02:08:08 24   MR. PAK: SORRY, I THINK IT WAS ALREADY ADMITTED. SO

02:08:11 25   LET'S LOOK AT EXHIBIT -- ACTUALLY, THE NEXT SLIDE. SLIDE 29.

02:08:17 1   Q.   THIS IS EXHIBIT 25. AND CAN YOU EXPLAIN AT A HIGH LEVEL

02:08:22 2   WHAT THIS EXHIBIT IS AND WHY YOU ARE USING THIS IN YOUR

02:08:26 3   ANALYSIS?

02:08:26 4   A.   SURE. THIS IS ANOTHER ARISTA DOCUMENT TITLED "CUSTOMIZING

02:08:29 5   THE EOS CLI." AND THIS IS BASICALLY SAYING THAT BECAUSE OF

02:08:33 6   THEIR EXTENSIBLE DESIGN, THE RELIANCE ON SYSDB, YOU CAN

02:08:40 7   CUSTOMIZE THE OPERATING SYSTEM TO MEET YOUR REQUIREMENTS

02:08:42 8   INSTEAD OF HAVING TO WAIT YEARS FOR YOUR VENDOR TO REACT.

02:08:45 9   SO THIS IS A BENEFIT TO THEIR ARCHITECTURE.

02:08:48 10   MR. PAK: AND I WOULD LIKE TO MOVE EXHIBIT 25 INTO

02:08:50 11   EVIDENCE, YOUR HONOR.

02:08:51 12   MR. KRISHNAN: NO OBJECTION.

02:08:52 13   THE COURT: IT WILL BE ADMITTED.

02:08:54 14   (PLAINTIFF'S EXHIBIT 25 WAS ADMITTED INTO EVIDENCE.)

02:08:54 15   BY MR. PAK:

02:09:06 16   Q.   AND CAN YOU READ INTO THE RECORD THE FIRST PARAGRAPH OF

02:09:10 17   THE EXHIBIT 25. THIS IS AN ARISTA DOCUMENT; CORRECT?

02:09:12 18   A.   YES. AS I SAID, THIS IS AN ARISTA DOCUMENT THAT'S

02:09:16 19   ENTITLED CUSTOMIZING EOS CLI PARSER 101.

02:09:20 20   SO THE FIRST PARAGRAPH IS: THE FUNDAMENTAL OPERATION OF

02:09:23 21   THE NETWORK OPERATING SYSTEM COMMAND-LINE INTERFACE, CLI, HAS

02:09:27 22   NOT CHANGED IN OVER 20 YEARS, CREATED AS THE PRIMARY MECHANISM

02:09:32 23   FOR INTERACTING WITH SWITCHES AND ROUTERS, THE CLI HAS REMAINED

02:09:36 24   AN UNCHANGED ENIGMATIC ENTITY SINCE ITS CREATION. ONCE

02:09:40 25   MASTERED, IT ALLOWS THE USER TO PERFORM VARIED TASKS FROM

02:09:46 1   CONFIGURATION AND MONITORING TO TROUBLE SHOOTING AND

02:09:48 2   MANAGEMENT. WHAT IT DOES NOT PROVIDE IS THE ABILITIES TO

02:09:50 3   SUPPORT THE RAPIDLY CHANGING REQUIREMENTS OF TODAY'S HIGH

02:09:53 4   PERFORMANCE NETWORKS.

02:09:54 5   Q.   OKAY. LET'S PAUSE YOU THERE.

02:09:56 6   SO THEN IF YOU SCROLL DOWN, SO GETTING STARTED, OR

02:10:04 7   ACTUALLY GOING BACK UP A LITTLE BIT, SORRY, LET'S HAVE YOU READ

02:10:08 8   THE SECOND PARAGRAPH, THE EXTENSIBLE DESIGN PARAGRAPH?

02:10:11 9   A.   RIGHT. SO THAT WAS THE PART THAT WAS ON MY SLIDE. IT

02:10:14 10   SAYS THE EXTENSIBLE DESIGN OF ARISTA'S EOS PROVIDE THE ABILITY

02:10:18 11   TO RAPIDLY CUSTOMIZE EOS TO MEET YOUR OPERATIONAL REQUIREMENTS.

02:10:22 12   INSTEAD OF CREATING "OFF BOX" SCRIPTS OR TOOLS, AWAITING OR

02:10:29 13   WAITING YEARS FOR YOUR CHOSEN VENDOR TO REACT YOU CAN EASILY

02:10:32 14   CUSTOMIZE EOS.

02:10:33 15   Q.   SO WHAT IS ARISTA TELLING THE WORLD ABOUT WHAT YOU CAN DO

02:10:36 16   WITH THE CLI COMMANDS FOR EOS?

02:10:38 17   A.   WELL, THEY ARE SAYING THAT IT'S EXTENSIBLE. SO YOU CAN

02:10:41 18   CREATE YOUR OWN COMMANDS.

02:10:43 19   Q.   OKAY. SO YOU COULD WRITE ANY COMMAND YOU WANT AND PUT IT

02:10:46 20   INTO THE ARISTA SYSTEM USING THIS TECHNOLOGY?

02:10:49 21   A.   THERE'S PROBABLY SOME LIMITS, BUT ULTIMATELY YOU NEED AN

02:10:53 22   AGENT TO EXECUTE YOUR COMMAND, BUT OTHER THAN THAT THERE'S NO

02:10:56 23   LIMIT TO WHAT YOU CAN DO.

02:10:57 24   Q.   SO YOU CAN CHANGE THE COMMAND, YOU CAN ADD NEW COMMANDS,

02:10:59 25   YOU CAN SUPPORT OTHER TYPES OF COMMANDS USING THIS EXTENSIBLE

02:11:03 1   ARCHITECTURE?

02:11:04 2   A.   SURE.

02:11:05 3   Q.   SO WE'VE DONE DIRECT INFRINGEMENT. YOUR JOB ALSO INCLUDED

02:11:10 4   LOOKING AT SOME OF THE EVIDENCE OF INDIRECT INFRINGEMENT. THIS

02:11:14 5   IS SLIDE 71.

02:11:23 6   AND I THINK MR. NELSON DID ME THE FAVOR OF INTRODUCING

02:11:26 7   THIS ONE INTO EVIDENCE. SO THIS NEXT SLIDE IS EXHIBIT 13, I

02:11:30 8   BELIEVE THAT'S IN EVIDENCE.

02:11:35 9   THE CLERK: YES.

02:11:36 10   MR. PAK: OKAY. GREAT.

02:11:37 11   MR. VAN NEST: IT'S IN EVIDENCE, YOUR HONOR.

02:11:38 12   THE COURT: THANK YOU.

02:11:39 13   BY MR. PAK:

02:11:39 14   Q.   SO THIS IS ONE OF THE ARISTA USER MANUALS THAT YOU'VE

02:11:42 15   SEEN, DR. JEFFAY?

02:11:43 16   A.   IT IS.

02:11:43 17   Q.   OKAY. AND WHY ARE YOU SHOWING THIS ONE WITH ALL THE

02:11:47 18   DIFFERENT COMMANDS LISTED OUT AND HIGHLIGHTED SHOW SNMP MIB?

02:11:52 19   A.   SO SHOW SNMP MIB IS JUST A PARTICULAR EXAMPLE, AND IT'S AN

02:11:57 20   EXAMPLE OF A COMMAND THAT HAS -- IT'S A GENERIC COMMAND THAT'S

02:12:01 21   GOING TO BE TRANSLATED INTO A PRESCRIBED COMMAND AND EXECUTED

02:12:05 22   BY AN AGENT.

02:12:06 23   AND THIS IS SIMPLY SAYING THAT ARISTA HAS DOCUMENTS THAT

02:12:10 24   ENCOURAGE OR TEACH PEOPLE TO USE COMMANDS THAT, WHEN ENTERED

02:12:15 25   INTO THE SYSTEM, WILL CAUSE THE INFRINGING METHOD TO BE

02:12:18 1   PERFORMED.

02:12:19 2   Q. SO AGAIN ON SLIDE 74, CAN YOU EXPLAIN TO THE JURY YOUR

02:12:21 3   UNDERSTANDING OF WHAT YOU WERE TRYING TO LOOK FOR IN TERMS OF

02:12:25 4   INDIRECT INFRINGEMENT?

02:12:26 5   A. SURE. SO THIS PARTICULAR KIND OF INDIRECT INFRINGEMENT I

02:12:30 6   UNDERSTAND IS KNOWN AS INDUCEMENT. AND BASICALLY THE ACTUAL

02:12:35 7   INFRINGEMENT OCCURS DIRECTLY BY ARISTA'S CUSTOMERS, FOR

02:12:38 8   EXAMPLE, IF THEY WERE TO TYPE IN THAT COMMAND SNMP AND SHOW

02:12:43 9   SNMP MIB. AND THAT ARISTA HAD KNOWLEDGE OF THE '526 PATENT

02:12:47 10   BECAUSE THEY WERE SERVED THE COMPLAINT IN THIS MATTER.

02:12:51 11   AND THEN ARISTA ENCOURAGES THEIR CUSTOMERS BY USING THE

02:12:55 12   FUNCTION BECAUSE, FOR EXAMPLE, THEY HAVE IT IN THEIR

02:12:58 13   DOCUMENTATION.

02:12:58 14   Q. OKAY. AND THEN DID YOU LOOK AT THE ISSUE OF CONTRIBUTORY

02:13:04 15   INFRINGEMENT WHICH IS ANOTHER TYPE OF INDIRECT INFRINGEMENT?

02:13:06 16   A. I DID.

02:13:07 17   Q. CAN YOU SUMMARIZE YOUR FINDINGS WITH RESPECT TO

02:13:10 18   CONTRIBUTORY INFRINGEMENT?

02:13:11 19   A. SURE. SO, AGAIN, WHEN A USER WERE TO TYPE IN A COMMAND

02:13:14 20   LIKE SHOW SNMP MIB, THEY WOULD BE DIRECTLY INFRINGING. ARISTA

02:13:17 21   HAD KNOWLEDGE OF THE PATENT, AT LEAST AS OF THE TIME THAT

02:13:22 22   ARISTA WAS SERVED THE COMPLAINT IN THIS CASE.

02:13:25 23   AND IT'S MY OPINION THAT WITH REGARD TO THESE PARSING AND

02:13:30 24   TRANSLATING FUNCTIONS THAT WE TALKED ABOUT, THE EOS PRODUCTS

02:13:34 25   WERE SPECIALLY MADE TO PERFORM THIS, THE INFRINGING METHOD AND

02:13:37 1   IN PARTICULAR, THAT THEY HAVE NO SUBSTANTIAL NONINFRINGING USE.

02:13:41 2   Q.   AND, AGAIN, WHO DESIGNED THIS SYSDB AND THE CLI AGENT TO

02:13:46 3   WORK TOGETHER, WERE THOSE ARISTA ENGINEERS OR THIRD-PARTY

02:13:49 4   ENGINEERS TO YOUR KNOWLEDGE?

02:13:51 5   A.   THOSE WERE ARISTA ENGINEERS.

02:13:53 6   Q.   AND I'M GOING TO NOW GO TO THE NEXT SECTION OF YOUR

02:13:56 7   ANALYSIS WHICH IS LOOKING AT WHETHER CISCO PRACTICES THE '526

02:14:00 8   PATENT. BUT I THINK THIS PRESENTATION WILL BE RELATIVELY SHORT

02:14:04 9   BECAUSE MY UNDERSTANDING IS THAT BOTH YOU AND DR. CHASE, WHO IS

02:14:07 10   ARISTA'S EXPERT, DO NOT DISPUTE THAT CISCO PRACTICES THIS

02:14:11 11   PATENT; IS THAT CORRECT?

02:14:12 12   A.   THAT'S MY UNDERSTANDING.

02:14:13 13   Q.   SO I THINK WE CAN KEEP THIS ONE FAIRLY LIMITED. AGAIN, I

02:14:17 14   DON'T WANT YOU TO DISCLOSE A LOT OF CONFIDENTIAL ASPECTS OF THE

02:14:22 15   CODE. BUT WHAT IS THE SOURCE CODE SPECIFICALLY THAT YOU LOOKED

02:14:24 16   AT FROM CISCO?

02:14:25 17   A.   WELL, THESE ARE THE FILES THAT ARE SHOWN HERE. SO, FOR

02:14:28 18   EXAMPLE, THE PREAMBLE OF CLAIM 1, YOU CAN FIND THE CODE INSIDE

02:14:35 19   THE FILE GLOBAL_SHOW.COMMAND.

02:14:39 20   THE FIRST LIMITATION OF CLAIM 1 YOU CAN FIND IN SUPPORT IN

02:14:45 21   THE FILE CONFIG.C.

02:14:47 22   THE SECOND LIMITATION YOU CAN FIND IN PARSER.C, AND

02:14:51 23   PARSER_TREE.C.

02:14:54 24   THE THIRD AND FOURTH LIMITATIONS OF CLAIM 1 YOU CAN FIND

02:15:00 25   SUPPORT IN PARSER.C.

02:15:02 1   AND THEN THE LAST LIMITATION YOU CAN FIND SUPPORT IN THE

02:15:05 2   REMAINING CODE HERE, PARSER_TOKENS.C, PARSER_OBJECTS.C AND

02:15:13 3   SHELL_PARSER.C

02:15:15 4   Q.   WERE YOU ABLE TO REVIEW SOME IOS XR DOCUMENTATION TO

02:15:19 5   SUPPORT YOUR VIEW THAT AT LEAST CLAIM 1 OF THE '526 PATENT IS

02:15:23 6   PRACTICED BY CISCO?

02:15:24 7   A.   YES, THAT ALONG WITH DISCUSSIONS WITH SOME CISCO

02:15:27 8   PERSONNEL.

02:15:27 9   Q.   AND DO YOU KNOW WHETHER ALL OF THIS MATERIAL WAS ALSO MADE

02:15:30 10   AVAILABLE FOR ARISTA'S EXPERT TO LOOK AT?

02:15:32 11   A.   MY UNDERSTANDING IS IT WAS.

02:15:34 12   Q.   AND HE'S NOT CHALLENGING YOUR VIEW OR OPINION THAT THAT

02:15:37 13   CLAIM IS SATISFIED?

02:15:38 14   A.   THAT'S MY UNDERSTANDING.

02:15:39 15   Q.   SO AGAIN, JUST SLIDE 78, SUMMARIZES YOUR OPINION WITH

02:15:43 16   RESPECT TO CISCO'S PRACTICE OF THE '526 PATENT. AND I THINK I

02:15:47 17   MAY NEED TO MOVE INTO EVIDENCE THE CISCO SOURCE CODE FILES.

02:15:51 18   AGAIN, YOUR HONOR, THIS WOULD BE UNDER SEAL.

02:15:53 19   THE COURT: OKAY.

02:15:53 20   MR. PAK: IT'S 3605-A-C -- A THROUGH C. I WOULD LIKE

02:16:02 21   TO MOVE THAT INTO EVIDENCE.

02:16:04 22   THE COURT: THAT'S THREE SEPARATE EXHIBITS?

02:16:06 23   ANY OBJECTION?

02:16:08 24   MR. KRISHNAN: NO OBJECTION.

02:16:09 25   THE COURT: IT WILL BE ADMITTED.

02:16:09 1

02:16:09 2   (PLAINTIFF'S EXHIBIT 3605A, B, AND C WERE ADMITTED INTO

02:16:10 3   EVIDENCE.)

02:16:10 4   BY MR. PAK:

02:16:10 5   Q.   AND THE LAST SET OF QUESTIONS, DR. JEFFAY, IS, WERE YOU

02:16:14 6   ALSO ASKED TO THINK ABOUT THE HYPOTHETICAL SITUATION OF HAD

02:16:20 7   ARISTA WANTED TO AVOID INFRINGING THE '526 PATENT AND THEY

02:16:26 8   COULD DESIGN AROUND THE PATENT, WHICH IS TO TAKE OUT ALL OF THE

02:16:29 9   ASPECTS OF THE INFRINGING CODE, WHETHER THAT WOULD BE SOMETHING

02:16:33 10   THAT COULD BE POSSIBLE; AND, TWO, THE AMOUNT OF EFFORT IT WOULD

02:16:39 11   TAKE ARISTA TO DO THAT?

02:16:40 12   A.   YES, I DID CONSIDER THAT.

02:16:42 13   Q.   OKAY. AND JUST TO BE CLEAR, DO YOU BELIEVE THAT AS A

02:16:45 14   TECHNICAL MATTER THAT YOU CAN DESIGN AROUND THE '526 PATENT BY

02:16:49 15   TAKING OUT THE INFRINGING FUNCTIONALITY?

02:16:50 16   A.   AS A TECHNICAL MATTER, I BELIEVE YOU CAN DO IT.

02:16:53 17   Q.   AS A -- FROM A PRODUCT STANDPOINT, ARE YOU OPINING THAT

02:16:58 18   THE DESIGN-AROUND PRODUCT WOULD BE EQUALLY ACCEPTABLE IN THE

02:17:03 19   MARKET PLACE?

02:17:04 20   A.   I'M NOT. A LOT OF IT DEPENDS ON EXACTLY HOW ONE IS

02:17:07 21   PROPOSING TO DESIGN AROUND. AND THERE REALLY IS NOT A VERY

02:17:10 22   CONCRETE PROPOSAL ON THE TABLE.

02:17:14 23   Q.   OKAY. IS IT POSSIBLE THAT TAKING OUT YOUR EXPERT OPINION,

02:17:17 24   THAT TAKING OUT THE FEATURES THAT ARE ACCUSED WOULD MAKE THE

02:17:21 25   ARISTA PRODUCT INTO AN INFERIOR PRODUCT?

02:17:23 1   A.   YES.

02:17:24 2   Q.   AND LOOKING AT ALL OF THE TECHNOLOGY INVOLVED AND LOOKING

02:17:28 3   AT THE UNDERLYING EVIDENCE, WHAT'S YOUR OPINION ON ROUGHLY HOW

02:17:34 4   MUCH EFFORT WOULD BE INVOLVED IN DESIGNING AROUND THE '526

02:17:37 5   PATENT BY ARISTA?

02:17:38 6   A.   SO, AGAIN, IT'S GOING TO DEPEND ON EXACTLY HOW YOU ARE

02:17:41 7   TRYING TO GET AROUND IT. AND AS I SAY, THERE REALLY AREN'T

02:17:44 8   VERY DETAILED PROPOSALS ON THE TABLE, BUT FROM WHAT WAS

02:17:48 9   PRESENTED, BASED ON MY EXPERIENCE HAVING WORKED WITH INDUSTRY

02:17:51 10   DEVELOPMENT TEAMS, I WOULD ESTIMATE IT WOULD TAKE ON THE ORDER

02:17:55 11   OF 20 INDIVIDUALS WORKING 6 MONTHS TO A YEAR TO REDESIGN THE

02:17:58 12   SYSTEM AND IMPLEMENT IT.

02:18:00 13   Q.   AND WHEN YOU SAY "INDIVIDUALS," YOU ARE TALKING ABOUT

02:18:02 14   SOFTWARE ENGINEERS?

02:18:02 15   A.   CORRECT.

02:18:03 16   MR. PAK: YOUR HONOR, AT THIS POINT I WOULD LIKE TO

02:18:04 17   PASS THE WITNESS.

02:18:05 18   THE COURT: OKAY.

02:18:09 19   LET'S GET STARTED WITH THE CROSS-EXAMINATION. ALL RIGHT.

02:18:19 20   MR. KRISHNAN: IT WILL JUST TAKE A MOMENT.

02:19:16 21   **CROSS-EXAMINATION**

02:19:17 22   BY MR. KRISHNAN:

02:19:17 23   Q.   GOOD AFTERNOON, DR. JEFFAY.

02:19:19 24   A.   GOOD AFTERNOON.

02:19:19 25   Q.   WE HAVEN'T MET BEFORE, BUT JUST TO INTRODUCE MYSELF FOR

02:19:24   1   THE JURY, I'M AJAY KRISHNAN FOR ARISTA.

02:19:27   2   A.   YES. HI.

02:19:28   3   Q.   FOR YOUR INFRINGEMENT ANALYSIS IN THIS CASE, YOU SUBMITTED

02:19:31   4   AN EXPERT REPORT; RIGHT?

02:19:33   5   A.   THAT'S RIGHT.

02:19:34   6   Q.   AND YOU WERE SUPPOSED TO LAY OUT YOUR ANALYSIS AND

02:19:37   7   CONCLUSIONS IN THAT EXPERT REPORT; RIGHT?

02:19:40   8   A.   THAT'S CORRECT.

02:19:40   9   Q.   AND YOU DID THAT?

02:19:41 10   A.   I DID.

02:19:42 11   Q.   NOW, IN THAT REPORT YOU IDENTIFIED 77 ARISTA COMMANDS AS

02:19:50 12   GENERIC COMMANDS UNDER YOUR INFRINGEMENT THEORY; RIGHT?

02:19:53 13   A.   CORRECT. SEVENTY-SEVEN EXAMPLES.

02:19:56 14   Q.   AND IF WE COULD DISPLAY TX 599, WHICH IS ALREADY IN

02:20:00 15   EVIDENCE.

02:20:02 16   AND IF WE COULD BLOW UP, MAYBE THE FIRST SEVERAL LINES

02:20:05 17   THERE.

02:20:09 18   DR. JEFFAY, THIS IS THAT LIST OF THE 77 COMMANDS; RIGHT?

02:20:12 19   A.   YES.

02:20:13 20   Q.   OKAY. NOW, YOU DIDN'T ANALYZE IN YOUR EXPERT REPORT THE

02:20:18 21   TOTAL NUMBER OF COMMANDS IN THE EOS; RIGHT?

02:20:20 22   A.   THAT'S CORRECT, I WAS FOCUSED ON DEMONSTRATING THE EOS

02:20:25 23   PERFORMS THE METHOD.

02:20:28 24   Q.   BUT YOU ASSUMED AS LEAST AT YOUR DEPOSITION THAT THERE

02:20:31 25   WERE OVER A THOUSAND COMMANDS IN EOS; RIGHT?

02:20:33   1   A.   THAT SOUNDS RIGHT.

02:20:34   2   Q.   SO OUT OF THE THOUSAND OR SO COMMANDS THAT YOU ASSUME ARE

02:20:39   3   IN EOS, YOU ONLY IDENTIFIED 77 IN YOUR EXPERT REPORT THAT YOU

02:20:44   4   CLAIM INFRINGE THE '526 PATENT; RIGHT?

02:20:48   5   A.   THAT'S ABSOLUTELY TRUE. BUT, AGAIN, THE ISSUE IS NOT THE

02:20:51   6   NUMBER OF COMMANDS; THE ISSUE IS DO THE ARISTA PRODUCTS

02:20:53   7   PRACTICE THE METHOD.

02:20:55   8   Q.   FAIR ENOUGH. NOW, LET'S TALK ABOUT THE 77 COMMANDS THAT

02:20:59   9   YOU IDENTIFIED. YOU JUST USED THE SAME LIST OF 77 COMMANDS

02:21:04 10   THAT CISCO'S LAWYERS PROVIDED TO YOU; RIGHT?

02:21:06 11   A.   THAT'S CORRECT.

02:21:07 12   Q.   OKAY. AND, IN FACT, IF WE BLOW UP THE TOP PORTION OF THAT

02:21:13 13   CHART, UNDER HIGHLY CONFIDENTIAL SOURCE CODE, FROM THERE MAYBE

02:21:22 14   DOWN TO THE FIRST LINE OF THE CHART, SO UP A LITTLE HIGHER.

02:21:26 15   RIGHT THERE, THAT'S GREAT.

02:21:28 16   OKAY. SO, IN FACT, IT SAYS THERE AT THE TOP OF THE CHART,

02:21:32 17   '526 APPENDIX TO CISCO'S INFRINGEMENT CONTENTIONS; RIGHT?

02:21:35 18   A.   CORRECT.

02:21:35 19   Q.   AND THAT'S WHERE THIS DOCUMENT CAME FROM, FROM CISCO'S

02:21:39 20   INFRINGEMENT CONTENTIONS; RIGHT?

02:21:40 21   A.   THAT'S MY UNDERSTANDING.

02:21:42 22   Q.   AND YOU DID ZERO WORK ON CISCO'S INFRINGEMENT CONTENTIONS;

02:21:46 23   RIGHT?

02:21:46 24   A.   THAT'S CORRECT.

02:21:47 25   Q.   OKAY. SO OUT OF -- AND SO THIS LIST OF 77 COMMANDS WAS

02:21:51 1   GENERATED BY SOMEONE OTHER THAN YOU?

02:21:53 2   A.   THAT'S RIGHT.

02:21:54 3   Q.   OKAY. SO OUT OF THE LIST OF 77 COMMANDS THAT WAS

02:21:59 4   GENERATED BY SOMEONE OTHER THAN YOU, YOU INCLUDED EVERY SINGLE

02:22:04 5   ONE OF THOSE COMMANDS IN YOUR INFRINGEMENT REPORT; CORRECT?

02:22:08 6   A.   CORRECT.

02:22:09 7   Q.   YOU DIDN'T IDENTIFY ANY ADDITIONAL COMMANDS IN YOUR

02:22:11 8   REPORT?

02:22:11 9   A.   THAT'S RIGHT. AGAIN, AS I SAY, THE ISSUE ISN'T THE

02:22:14 10   COMMANDS; THE ISSUE IS THE METHOD.

02:22:15 11   Q.   AND YOU DIDN'T DISAGREE WITH A SINGLE ONE OF THE 77

02:22:19 12   COMMANDS CISCO PUT ON YOUR LIST; RIGHT?

02:22:23 13   A.   THAT IS CORRECT.

02:22:24 14   Q.   NOW, WHEN YOU WERE DOING YOUR ANALYSIS, YOU WERE SUPPOSED

02:22:27 15   TO EVALUATE WHETHER OR NOT EOS INFRINGES; RIGHT?

02:22:29 16   A.   YES.

02:22:30 17   Q.   AND YOU WEREN'T JUST LOOKING FOR INFRINGEMENT; RIGHT?

02:22:33 18   A.   CORRECT.

02:22:34 19   Q.   OKAY. YOU WERE LOOKING FOR EITHER INFRINGEMENT OR

02:22:38 20   NONINFRINGEMENT; RIGHT?

02:22:39 21   A.   CORRECT.

02:22:39 22   Q.   AND DURING YOUR ANALYSIS YOU ACTUALLY FOUND EXAMPLES OF

02:22:43 23   EOS COMMANDS THAT YOU BELIEVE ARE NOT GENERIC COMMANDS AS

02:22:48 24   REQUIRED BY THE '526 PATENT; RIGHT?

02:22:49 25   A.   THAT'S CORRECT.

02:22:50 1   Q.   AND WHAT ARE SOME OF THE THOSE COMMANDS?

02:22:52 2   A.   I DON'T RECALL THEM OFF THE TOP OF MY HEAD.

02:22:55 3   Q.   RIGHT. AND YOU DIDN'T ACTUALLY INCLUDE THEM IN YOUR

02:22:57 4   EXPERT REPORT EITHER, DID YOU?

02:22:59 5   A.   NO, BECAUSE AGAIN THE ISSUE IS I'M TRYING TO SHOW THERE

02:23:02 6   WAS A METHOD THAT'S PRACTICED.

02:23:04 7   Q.   SO YOU INCLUDED 77 EXAMPLES OF THE EOS COMMANDS THAT YOU

02:23:12 8   FOUND TO INFRINGE; RIGHT?

02:23:13 9   A.   YES, THE METHOD BEHIND PROCESSING THESE COMMANDS WOULD

02:23:17 10   INFRINGE, YES.

02:23:18 11   Q.   BUT YOU INCLUDED ZERO EXAMPLES, EVEN THOUGH YOU KNEW OF

02:23:22 12   SOME, OF THE EOS COMMANDS THAT DON'T INFRINGE; RIGHT?

02:23:25 13   A.   SURE. EVEN THOUGH THERE'S COMMANDS THAT DON'T FOLLOW THE

02:23:28 14   METHOD, THE ISSUE IS ARE THERE SOME THAT FOLLOW THE METHOD.

02:23:31 15   Q.   OKAY. SO NOW LET'S TALK ABOUT THIS LIST OF 77 COMMANDS.

02:23:36 16   SO THE FIRST COLUMN THERE, THOSE ARE THE GENERIC COMMANDS;

02:23:41 17   RIGHT.

02:23:41 18   A.   THAT'S CORRECT.

02:23:42 19   Q.   AND THEN THE NEXT COLUMN OVER, THOSE ARE THE PRESCRIBED

02:23:45 20   COMMANDS; RIGHT?

02:23:46 21   A.   YES.

02:23:46 22   Q.   AND THE GENERIC COMMANDS ARE THE ONES THAT ARE ENTERED BY

02:23:52 23   THE USER; RIGHT?

02:23:53 24   A.   CORRECT.

02:23:53 25   Q.   AND THEN UNDER THE HOOD THEY GET TRANSLATED TO THE

02:23:57	1	PRESCRIBED COMMANDS; RIGHT?
02:23:58	2	A. CORRECT.
02:23:59	3	Q. OKAY. AND NOW THESE PRESCRIBED COMMANDS HAVE TO BE
02:24:03	4	EXECUTED BY MANAGEMENT PROGRAMS; RIGHT?
02:24:06	5	A. THAT'S CORRECT.
02:24:06	6	Q. AND, IN FACT, THAT'S ONE OF THE MAIN POINTS OF THE PATENT
02:24:10	7	THAT THE PRESCRIBED COMMANDS ARE IN THE FORMAT THAT THE
02:24:14	8	MANAGEMENT PROGRAMS UNDERSTAND; RIGHT?
02:24:17	9	A. THAT'S CORRECT.
02:24:17	10	Q. OKAY. SO IF WE LOOK AT THE CLAIM CONSTRUCTION CHART,
02:24:21	11	WHICH THERE SHOULD BE A TAB IN YOUR BINDER CALLED CLAIM
02:24:25	12	CONSTRUCTION CHART, AND THIS SHOULD BE THE SAME CHART THAT'S IN
02:24:30	13	THE JUROR NOTEBOOKS AS WELL. AND LET'S LOOK AT THE DEFINITION
02:24:36	14	OF MANAGEMENT PROGRAMS.
02:24:42	15	A. OKAY.
02:24:43	16	Q. AND SO THAT DEFINITION IS "TOOLS OR AGENTS CONFIGURED TO
02:24:49	17	EXECUTE USER DIRECTED COMMANDS HAVING THEIR OWN RESPECTIVE
02:24:53	18	COMMAND FORMATS THAT PROVIDE MANAGEMENT FUNCTIONS;" RIGHT?
02:24:57	19	A. YES.
02:24:58	20	Q. AND THOSE USER-DIRECTED COMMANDS ARE THE PRESCRIBED
02:25:02	21	COMMANDS; RIGHT?
02:25:04	22	A. YES.
02:25:07	23	Q. OKAY. AND LET ME JUST MARK IN ON THE BOARD. SO I'M GOING
02:25:28	24	TO MARK SOME LANGUAGE ON THIS BOARD WHICH HAS THE LANGUAGE OF
02:25:36	25	CLAIM 1 ON IT. IS IT THAT OKAY, DR. JEFFAY?

02:25:40   1   A.   SURE, SURE.

02:25:41   2   Q.   OKAY. SO FIRST STEP HERE AT THE TOP I'VE UNDERLINED THE

02:26:02   3   LANGUAGE "MANAGEMENT PROGRAMS ACCORDING TO RESPECTIVE COMMAND

02:26:06   4   FORMATS."

02:26:07   5   DO YOU SEE THAT?

02:26:07   6   A.   I DO.

02:26:08   7   Q.   OKAY. AND THAT CLAIM LANGUAGE SUPPORTS YOUR OPINION THAT

02:26:13   8   THE PRESCRIBED COMMANDS HAVE TO BE EXECUTED BY MANAGEMENT

02:26:19   9   PROGRAMS; RIGHT?

02:26:20   10   A.   YES.

02:26:20   11   Q.   ASK SIMILARLY DOWN HERE IN THE LAST CLAIM ELEMENT IT SAYS,

02:26:24   12   "PRESCRIBED COMMAND OF A SELECTED ONE OF THE MANAGEMENT

02:26:26   13   PROGRAMS."

02:26:27   14   DO YOU SEE THAT?

02:26:27   15   A.   I DO.

02:26:28   16   Q.   AND THAT TOO SUPPORTS YOUR OPINION THAT THE PRESCRIBED

02:26:32   17   COMMANDS HAVE TO BE EXECUTED BY MANAGEMENT PROGRAMS; RIGHT?

02:26:36   18   A.   YES.

02:26:37   19   Q.   OKAY. AND WHY DON'T I JUST HIT THIS FILE WHILE WE ARE

02:26:44   20   LOOKING AT THE BOARD, IF ANY OF THE ELEMENTS IN THIS PATENT

02:26:47   21   CLAIM ARE NOT MET IN ARISTA'S PRODUCTS, THEN ARISTA'S PRODUCTS

02:26:51   22   DON'T INFRINGE; IS THAT RIGHT?

02:26:52   23   A.   THAT'S CORRECT.

02:26:53   24   Q.   SO YOU HAVE TO SHOW THE PRESENCE OF EVERY SINGLE ELEMENT

02:26:56   25   IN ORDER TO SUPPORT YOUR OPINION OF INFRINGEMENT; RIGHT?

02:26:59 1   A.   YES.

02:26:59 2   Q.   OKAY. NOW, YOU UNDERSTAND THAT THERE ARE CERTAIN PROGRAMS

02:27:04 3   IN EOS THAT EOS REFERS TO AS AGENTS; RIGHT?

02:27:08 4   A.   YES.

02:27:09 5   Q.   OKAY. AND SO JUST TO GET OUR TERMINOLOGY STRAIGHT, I

02:27:13 6   WOULD LIKE TO USE THE PHRASE EOS AGENTS TO REFER TO THOSE

02:27:18 7   PROGRAMS THAT EOS REFERS TO AS AGENTS. IS THAT OKAY?

02:27:23 8   A.   THAT'S FINE.

02:27:24 9   Q.   CAN WE PUT UP SLIDE 21 FROM THE DIRECT EXAMINATION,

02:27:34 10   PLEASE.

02:27:34 11   SO THIS IS A SLIDE FROM YOUR DECK; RIGHT?

02:27:36 12   A.   YES.

02:27:36 13   Q.   AND THIS IS AN ACCURATE DEPICTION OF THE EOS

02:27:40 14   INFRASTRUCTURE?

02:27:42 15   A.   YES.

02:27:42 16   Q.   AND ON THE RIGHT IT DEPICTS VARIOUS EOS AGENTS, CORRECT?

02:27:46 17   A.   YES.

02:27:46 18   Q.   OKAY. AND I WILL JUST SAY FOR THE RECORD THERE ARE A

02:27:49 19   NUMBER OF RECTANGLES, A BLUE RECTANGLE THAT SAYS ASIC DRIVER,

02:27:55 20   UNDER THAT MAYBE A PINK OR SALMON COLORED ONE THAT SAYS

02:28:00 21   SPANNING TREE, AND UNDER THAT A GREEN ONE THAT SAYS LED AGENT.

02:28:05 22   THOSE ARE EXAMPLES OF EOS AGENTS ON THIS SLIDE; RIGHT?

02:28:08 23   A.   YES.

02:28:08 24   Q.   AND THOSE ARE THE THINGS THAT YOU'RE ACCUSING OF BEING

02:28:12 25   MANAGEMENT PROGRAMS UNDER THE PATENTS'S LANGUAGE; RIGHT?

02:28:15 1   A.   YES, THOSE ARE AMONG THE THINGS THAT ARE BEING ACCUSED.

02:28:18 2   Q.   OKAY.   NOW, THOSE ARE THE MANAGEMENT PROGRAMS THAT HAVE TO

02:28:21 3   EXECUTE THE PRESCRIBED COMMANDS; RIGHT?

02:28:23 4   A.   YES.

02:28:24 5   Q.   OKAY.   AND, AGAIN, AND MAYBE WE COULD DO IT SIDE BY SIDE

02:28:29 6   HERE WITH TX 599 AND HIGHLIGHT OR BLOW UP MAYBE THE SECOND

02:28:36 7   COLUMN THERE CALLED PRESCRIBED COMMANDS.

02:28:42 8   SO THAT COLUMN OF PRESCRIBED COMMAND, THOSE ARE THE

02:28:47 9   PRESCRIBED COMMANDS THAT -- OF THE 77 EXAMPLES YOU'VE

02:28:50 10   IDENTIFIED; RIGHT?

02:28:51 11   A.   YES.

02:28:53 12   Q.   OKAY.   THE SECOND COLUMN OF TX 599?

02:28:57 13   A.   YES.

02:28:57 14   Q.   OKAY.   SO THESE PRESCRIBED COMMANDS, ACCORDING TO YOU, GET

02:29:04 15   EXECUTED BY ONE OF THE EOS AGENTS SHOWN OVER ON THE RIGHT SIDE

02:29:11 16   OF YOUR SLIDE 21; RIGHT?

02:29:14 17   A.   OH.   WELL, THIS DIDN'T COME OUT, BUT SLIDE 21 IS NOT AN

02:29:22 18   EXHAUSTIVE OF LIST OF ALL THE AGENTS IT'S JUST AN EXAMPLE.   AND

02:29:25 19   SPECIFICALLY WHAT I BELIEVE I SAID, WAS THAT SLIDE 21 WAS JUST

02:29:27 20   A RENDERING OF A SPECIFIC SLIDE THAT APPEARED IN AN ARISTA

02:29:31 21   DOCUMENT.   BUT IT'S NOT TO SAY THAT THERE ARE JUST FIVE AGENTS,

02:29:34 22   THAT THERE'S A LARGE NUMBER OF AGENTS.

02:29:36 23   Q.   OKAY.   SO FAIR ENOUGH.   MAYBE I CAN RESTATE THIS TO

02:29:40 24   ADDRESS YOUR POINT.

02:29:43 25   THOSE PRESCRIBED COMMANDS SHOWN ON TX 599, ACCORDING TO

02:29:49   1   YOU, THOSE GET EXECUTED BY EOS AGENTS SUCH AS THOSE THAT ARE

02:29:56   2   DEPICTED ON THE RIGHT SIDE OF SLIDE 21; CORRECT?

02:30:00   3   A.   I THINK THE WORD I SAID WAS IT'S AMONG. THESE ARE THE

02:30:04   4   RIGHT SIDE OF SLIDE 21, THESE ARE AMONG THE AGENTS IN THE EOS.

02:30:08   5   Q.   AND CAN WE MAYBE HIGHLIGHT ALSO THE MANAGEMENT PROGRAM

02:30:12   6   AGENTS ON THE RIGHT SIDE OF SLIDE 21 AND MAYBE JUST HIGHLIGHT

02:30:20   7   ALL OF THEM, ACTUALLY.

02:30:21   8   OKAY. SO JUST SO WE ARE TALKING ABOUT THE SAME THING,

02:30:24   9   THOSE HIGHLIGHTED ENTITIES ARE AMONG, ACCORDING TO YOU, THE EOS

02:30:30   10   AGENTS THAT EXECUTE THE PRESCRIBED COMMANDS SHOWN ON TX 599;

02:30:36   11   RIGHT?

02:30:36   12   A.   THAT'S CORRECT.

02:30:37   13   Q.   OKAY. NOW, ON THIS SLIDE YOU'VE IDENTIFIED A TRANSLATOR

02:30:42   14   INSIDE OF THAT CLI ENTITY IN BLUE ON THE LEFT SIDE OF THE

02:30:48   15   SLIDE; RIGHT?

02:30:48   16   A.   YES.

02:30:48   17   Q.   OKAY. AND THAT'S WHERE TRANSLATION HAPPENS; RIGHT?

02:30:51   18   A.   CORRECT.

02:30:52   19   Q.   INSIDE THE CLI?

02:30:53   20   A.   YES.

02:30:54   21   Q.   OKAY. SO THAT'S WHERE THE GENERIC COMMANDS THAT YOU'VE

02:30:58   22   ACCUSED OF INFRINGEMENT GET TRANSLATED INTO THE PRESCRIBED

02:31:02   23   COMMANDS; RIGHT?

02:31:04   24   A.   YES.

02:31:06   25   Q.   AND ACCORDING TO YOU, THE PRESCRIBED COMMANDS ON YOUR LIST

02:31:11 1   GET EXECUTED BY THE MANAGEMENT PROGRAMS ON THE RIGHT SIDE OF

02:31:16 2   THE SLIDE; RIGHT?

02:31:17 3   A.   RIGHT, AND, AGAIN, WITH THE UNDERSTANDING IS THEY ARE JUST

02:31:20 4   EXAMPLES.

02:31:20 5   Q.   FAIR ENOUGH. OKAY. SO THE COMMANDS, THE PRESCRIBED

02:31:24 6   COMMANDS, THAT ARE ALREADY TRANSLATED IN THE BLUE CLI ENTITY;

02:31:29 7   RIGHT?

02:31:29 8   A.   OKAY.

02:31:30 9   Q.   AND THEY GET EXECUTED OVER ON THE RIGHT IN THE MANAGEMENT

02:31:34 10   PROGRAMS; RIGHT?

02:31:35 11   A.   YES.

02:31:35 12   Q.   OKAY. AND THEY GET EXECUTED BY THOSE EOS AGENTS; RIGHT?

02:31:40 13   A.   CORRECT.

02:31:40 14   Q.   SO THEY HAVE TO GET OVER THERE BY GETTING TRANSMITTED

02:31:44 15   THROUGH SYSDB AND OVER TO THE RELEVANT AGENT; RIGHT?

02:31:48 16   A.   YES.

02:31:48 17   Q.   OKAY. AND THAT'S YOUR OPINION IN THIS CASE THAT THE 77

02:31:55 18   PRESCRIBED COMMANDS IDENTIFIED ON EXHIBIT 599 ACTUALLY GET

02:32:01 19   TRANSMITTED THROUGH SYSDB AND OVER TO VARIOUS AGENTS, EOS

02:32:08 20   AGENTS, SUCH AS THOSE SHOWN ON THE RIGHT SIDE OF THE SLIDE;

02:32:11 21   RIGHT?

02:32:11 22   A.   WELL, THAT'S NOT EXACTLY RIGHT. WE DIDN'T GO INTO IT IN

02:32:15 23   THIS LEVEL OF DETAIL. BUT MY OPINION IS THEY ARE ALL EXECUTED

02:32:18 24   BY AGENTS, THEY MAY NOT -- I'M NOT SAYING THAT ALL 77 OF THESE

02:32:23 25   COMMANDS GO THROUGH SYSDB.

02:32:24 1   Q.   WELL, DR. JEFFAY, YOU SAID THAT THIS WAS AN ACCURATE

02:32:28 2   DEPICTION OF THE EOS ARCHITECTURE; RIGHT?

02:32:31 3   A.   IT IS.

02:32:31 4   Q.   OKAY. SO YOU DIDN'T DRAW IN YOUR DEPICTION OF THE EOS

02:32:36 5   ARCHITECTURE WHEN PRESENTING YOUR TESTIMONY ON DIRECT

02:32:40 6   EXAMINATION, ANY OTHER WAY IN WHICH THE COMMANDS TRAVEL FROM

02:32:43 7   THE CLI OVER TO THE MANAGEMENT PROGRAMS, DID YOU?

02:32:46 8   A.   NO. AGAIN, THIS WAS JUST A REDRAWING OF A -- OF AN ARISTA

02:32:51 9   FIGURE FOR PURPOSES OF ILLUSTRATING THE HIGH LEVEL CONCEPT.

02:32:55 10   Q.   OKAY. BUT LET ME JUST MAKE ONE THING CLEAR. YOU ARE

02:32:59 11   CONFIDENT THAT THE -- THAT THE PRESCRIBED COMMANDS THAT START

02:33:03 12   OFF IN THE CLI ENTITY IN THE BLUE RECTANGLE ON THE LEFT,

02:33:08 13   ACTUALLY GET EXECUTED OVER IN SOME MANAGEMENT PROGRAMS SUCH AS

02:33:12 14   THOSE ON THE RIGHT SIDE OF THE SLIDE; RIGHT?

02:33:14 15   A.   YES.

02:33:14 16   Q.   OKAY. AND YOU KNOW THAT BECAUSE YOU CLAIM THAT YOU

02:33:20 17   PERFORMED VARIOUS SOURCE CODE TRACES DURING YOUR ANALYSIS THAT

02:33:24 18   CONFIRMED THAT; RIGHT?

02:33:25 19   A.   YES.

02:33:25 20   Q.   OKAY. AND YOU PERFORMED THOSE SOURCE CODE TRACES FOR ALL

02:33:29 21   OF THE 77 PRESCRIBED COMMANDS ON TX 599; RIGHT?

02:33:33 22   A.   I DON'T RECALL IF I PERFORMED THEM FOR ALL OF THEM OR NOT.

02:33:36 23   Q.   OKAY. BUT YOU PERFORMED THOSE SOURCE CODE TRACES FOR SOME

02:33:42 24   OF THE COMMANDS ON TX 599; RIGHT?

02:33:44 25   A.   YES.

02:33:45 1   Q.   OKAY. BUT YOU DIDN'T ACTUALLY SHOW ANY OF THOSE SOURCE

02:33:48 2   CODE TRACES IN YOUR EXPERT REPORT, DID YOU?

02:33:50 3   A.   I SHOWED SOURCE CODE TRACES TO SHOW HOW COMMANDS ARE

02:33:56 4   ADDED, HOW THE PARSING WORKS, AND HOW THE, WHAT'S CALLED THE

02:34:00 5   VALUE FUNCTION, THE COMMAND ACTION VALUE IS INVOKED.

02:34:03 6   Q.   OKAY.

02:34:04 7   A.   -- WHICH CAUSES THE AGENT TO EXECUTE THE PRESCRIBED

02:34:12 8   COMMANDS.

02:34:12 9   Q.   THANK YOU, DR. JEFFAY, BUT THAT WASN'T QUITE MY QUESTION.

02:34:15 10   MY QUESTION WAS, FOR ANY OF THE 77 PRESCRIBED COMMANDS

02:34:19 11   THAT ARE SHOWN ON TX 599, DID YOU INCLUDE IN YOUR EXPERT REPORT

02:34:25 12   A SOURCE CODE TRACE THAT SHOWS HOW THAT PRESCRIBED COMMAND GETS

02:34:31 13   ACTUALLY EXECUTED BY A PARTICULAR EOS AGENT, SUCH AS ONE OF

02:34:36 14   THOSE SHOWN ON THE RIGHT SIDE OF SLIDE 21?

02:34:39 15   A.   NO. I THINK THE EVIDENCE THAT I PROVIDED FOR THAT WAS

02:34:42 16   BASED ON DOCUMENTS AND ARISTA TESTIMONY.

02:34:44 17   Q.   OKAY. SO IT MAKES IT PRETTY HARD FOR SOMEONE REVIEWING

02:34:47 18   YOUR EXPERT REPORT TO FIGURE OUT EXACTLY WHICH CODE TRACE YOU

02:34:51 19   PERFORMED BECAUSE YOU DIDN'T SHOW IT IN YOUR EXPORT REPORT;

02:34:56 20   RIGHT?

02:34:56 21   A.   I DON'T THINK I UNDERSTAND THE QUESTION. I THINK IT'S

02:34:58 22   QUITE STRAIGHTFORWARD TO UNDERSTAND WHAT CODE TRACE I

02:35:01 23   PERFORMED.

02:35:01 24   Q.   YOU DIDN'T INCLUDE THAT CODE TRACE IN YOUR EXPERT REPORT,

02:35:05 25   DID YOU?

02:35:05 1   A.   BUT YOU ARE ASKING WHAT I PERFORMED, AND WHAT I PERFORMED

02:35:08 2   IS DOCUMENTED IN THE REPORT AND I BELIEVE IT'S, IT'S VERY

02:35:12 3   APPARENT WHAT I'VE PERFORMED.

02:35:13 4   Q.   WELL, LET'S JUST BE CLEAR WHAT I'M ASKING, WHAT I'M ASKING

02:35:18 5   IS, FOR -- IN ORDER TO SHOW THAT ANY ONE OF THOSE PRESCRIBED

02:35:23 6   COMMANDS ON TX 599 ACTUALLY GET EXECUTED BY AN EOS AGENT, SUCH

02:35:29 7   AS THOSE SHOWN ON THE RIGHT-HAND SIDE OF THE SLIDE, YOU HAVE

02:35:33 8   NOT SHOWN IN YOUR REPORT THE SPECIFIC SOURCE CODE TRACES THAT

02:35:36 9   WOULD PROVE THAT, DID YOU?

02:35:37 10   A.   NO. AS I SAY FOR THE ACTUAL EXECUTION, I'M RELYING ON

02:35:43 11   DOCUMENTS AND OTHER TESTIMONY.

02:35:44 12   Q.   OKAY. BUT DESPITE NOT PUTTING IT IN YOUR REPORT YOU ARE

02:35:47 13   CONFIDENT THAT THAT'S ACTUALLY HOW IT WORKS, RIGHT, THAT THE

02:35:52 14   PRESCRIBED COMMANDS SHOWN ON TX 599 ACTUALLY GET EXECUTED BY AN

02:35:56 15   EOS AGENT SUCH AS THOSE ON THE RIGHT-HAND SIDE OF SLIDE 21?

02:36:01 16   A.   YES.

02:36:01 17   Q.   OKAY. NOW, LET'S GO BACK TO -- WELL, ACTUALLY WE CAN STAY

02:36:11 18   WITH THIS SIDE BY SIDE HERE OF THESE TWO DOCUMENTS.

02:36:18 19   NOW, YOU DID NOT IDENTIFY IN YOUR EXPORT REPORT THE NAMES

02:36:26 20   OF THE SPECIFIC EOS AGENTS THAT ACTUALLY EXECUTE ANY ONE OF THE

02:36:30 21   77 PRESCRIBED COMMANDS SHOWN ON TX 599; RIGHT?

02:36:35 22   A.   I THINK I IDENTIFY THEM BY THEIR HIGH LEVEL NAMES LIKE THE

02:36:39 23   STP, THE MLAG AND THE OSPF.

02:36:42 24   Q.   SO, DR. JEFFAY, I JUST WANT TO BE VERY CLEAR ABOUT WHAT

02:36:46 25   I'M ASKING HERE. FOR ANY PARTICULAR ONE OF THESE PRESCRIBED

02:36:51 1   COMMANDS, IN YOUR EXPERT REPORT DID YOU NAME THE EOS AGENT THAT

02:36:58 2   ACTUALLY EXECUTES THAT COMMAND?

02:37:04 3   A.   I BELIEVE -- YES, I BELIEVE THERE'S AN EXAMPLE.

02:37:08 4   Q.   THERE'S ONE EXAMPLE?

02:37:10 5   A.   THERE'S A PARAGRAPH THAT DESCRIBES THIS, AND I BELIEVE IT

02:37:12 6   LISTS THREE AGENTS.

02:37:13 7   Q.   WHICH PARAGRAPH IS THAT IN YOUR EXPERT REPORT?

02:37:18 8   A.   CAN YOU HELP ME WITH THE BINDER? HERE, I'VE GOT IT.

02:37:52 9   SO THIS IS THE ANALYSIS OF CLAIM LIMITATION 1.5 WHICH IS

02:37:56 10   THE LAST PART OF THE PATENT THAT STARTS ON PARAGRAPH 164, AND

02:38:02 11   IT GOES THROUGH 172.

02:38:18 12   Q.   OKAY.

02:38:19 13   A.   AND IT'S THE THREE THAT I SAY THAT I WAS MENTIONING HERE

02:38:23 14   ARE RECITED IN PARAGRAPH 167: THE LAG, WHICH STANDS FOR LINK

02:38:28 15   AGGREGATION; STP, WHICH IS THE SPANNING-TREE; AND, OSPF, WHICH

02:38:34 16   IS A ROUTING PROTOCOL.

02:38:35 17   Q.   BUT YOU DID MENTION THOSE THREE AGENTS IN YOUR REPORT,

02:38:38 18   DR. JEFFAY, BUT YOU DIDN'T, WITH RESPECT TO THOSE THREE AGENTS,

02:38:42 19   IDENTIFY THE SPECIFIC PRESCRIBED COMMANDS ON TX 599 THAT THEY

02:38:46 20   EXECUTED; RIGHT?

02:38:48 21   A.   THE COMMANDS ARE THERE, BUT I DID NOT EXPLICITLY LIST THEM

02:39:05 22   IN THE BODY OF THE REPORT.

02:39:06 23   Q.   WHEN YOU SAY THE COMMANDS ARE THERE, WHAT DOES THAT MEAN?

02:39:10 24   A.   THEY ARE LISTED ON WHAT WAS APPENDIX 4.

02:39:12 25   Q.   TX 599?

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02:39:14   1    A.   THANK YOU.

02:39:15   2    Q.   RIGHT.  BUT IN THE SECTIONS OF THE REPORT THAT YOU JUST

02:39:17   3    CITED PARAGRAPHS 164 TO 170 OR 172, YOU DIDN'T ACTUALLY SAY

02:39:22   4    THIS PARTICULAR EOS AGENT LAG EXECUTES ANY ONE OF THESE

02:39:27   5    PARTICULAR PRESCRIBED COMMANDS ON TX 599; RIGHT?

02:39:32   6    A.   THAT'S CORRECT.

02:39:32   7    Q.   OKAY.  NOW, LET'S STAY ON THE SUBJECT OF AGENTS FOR A

02:39:36   8    SECOND.  I'M GOING TO CONTINUE TO USE THE PHRASE EOS AGENTS TO

02:39:41   9    REFER TO THOSE THINGS THAT EOS REFERS TO AS AGENTS, IS THAT

02:39:45  10    OKAY?

02:39:45  11    A.   OKAY.

02:39:46  12    Q.   OKAY.  SO AT LEAST AS OF THE TIME OF YOUR DEPOSITION, YOU

02:39:50  13    DIDN'T ACTUALLY KNOW WHAT THE REQUIREMENTS ARE WITHIN EOS FOR

02:39:55  14    CALLING SOMETHING AN AGENT; RIGHT?

02:39:57  15    A.   I SAID --- YEAH, I COULDN'T RECALL WHAT THE REQUIREMENTS

02:40:01  16    WERE.

02:40:01  17    Q.   YOU DIDN'T ACTUALLY SAY YOU COULDN'T RECALL.  YOU SAID YOU

02:40:04  18    DID NOT KNOW; ISN'T THAT RIGHT?

02:40:05  19    A.   I THINK WE PROBABLY DID HAVE A Q AND A LIKE THAT.

02:40:08  20    Q.   OKAY.  AND ALL YOU HAD WAS AN IMPRESSION THAT A PROGRAM

02:40:12  21    THAT INTERACTS WITH OTHER ENTITIES THROUGH SYSDB IS AN AGENT;

02:40:16  22    RIGHT?

02:40:16  23    A.   THAT'S CERTAINLY PART OF IT, YES.

02:40:18  24    Q.   YOU CALLED THAT --

02:40:19  25    A.   THERE'S MORE TO IT, BUT YES.
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02:40:21 1   Q.   YOU CALLED THAT YOUR IMPRESSION?

02:40:22 2   A.   I ASSUME I USED THAT WORD.

02:40:25 3   Q.   OKAY. SO AS OF THE TIME OF YOUR DEPOSITION, YOU DID NO

02:40:29 4   RESEARCH OR ANALYSIS TO DETERMINE WHAT A FORMAL DEFINITION OF

02:40:33 5   WHAT AN AGENT IS WITHIN EOS; RIGHT?

02:40:35 6   A.   WELL, AS I SAID, WE ALSO HAD -- THERE WAS SOME LATER Q AND

02:40:39 7   A ON THAT TOPIC WHERE I RECALL THAT MR. SWEENEY HAD SAID THAT

02:40:44 8   AS FAR AS ARISTA IS CONCERNED, A PROCESS IS AN AGENT.

02:40:46 9   Q.   OKAY. SO BASICALLY YOU'RE SAYING THAT YOUR UNDERSTANDING

02:40:53 10   OF WHAT AN EOS AGENT IS, IS BASED ON THAT ONE SENTENCE FROM

02:40:59 11   MR. SWEENEY'S DEPOSITION?

02:41:02 12   A.   NO, IT'S NOT THAT ONE SENTENCE. I MEAN, IT'S PART OF IT.

02:41:06 13   THIS IS ARISTA'S CORPORATE REPRESENTATIVE WHO IS TELLING US

02:41:09 14   OFFICIALLY WHAT EOS AND FACTS ABOUT IT, AND ONE OF THE THINGS

02:41:14 15   HE SAID WAS THAT AN AGENT IN EOS IS A PROCESS.

02:41:17 16   Q.   AND IN YOUR EXPERIENCE AND EXPERTISE AS A COMPUTER

02:41:21 17   SCIENTIST, DID YOU CONSIDER THAT TO BE A FORMAL DEFINITION OF

02:41:24 18   WHAT AN EOS AGENT IS?

02:41:25 19   A.   IT'S ENOUGH OF A DEFINITION -- I CAN UNDERSTAND WHAT HE

02:41:29 20   SAID, AND I CAN APPLY WHAT HE SAID.

02:41:31 21   Q.   OKAY. BUT YOU DIDN'T ACTUALLY DO ANY ANALYSIS OR RESEARCH

02:41:35 22   WITHIN EOS'S SOURCE CODE TO CONFIRM OR DETERMINE THAT --

02:41:42 23   WHETHER OR NOT THERE ARE PARTICULAR TESTS OR DEFINITIONS WITHIN

02:41:45 24   EOS TO CALL SOMETHING AN AGENT; RIGHT?

02:41:47 25   A.   I'M NOT SURE WHAT TESTS YOU ARE THINKING OF.

02:41:50 1   Q.   OKAY. WELL, AT LEAST AT YOUR DEPOSITION, YOU SAID THAT

02:41:54 2   YOU DON'T RECALL SEEING ANYTHING THAT YOU WOULD REFER TO AS A

02:41:56 3   FORMAL DEFINITION; RIGHT?

02:41:57 4   A.   YES, THAT'S CORRECT.

02:41:58 5   Q.   OKAY. SO TO SUM UP, YOU ACCUSED EOS AGENTS AS BEING

02:42:05 6   MANAGEMENT PROGRAMS; RIGHT?

02:42:07 7   A.   YES.

02:42:07 8   Q.   BUT YOU DIDN'T ACTUALLY KNOW WHAT THE REQUIREMENTS ARE FOR

02:42:11 9   CALLING SOMETHING AN EOS AGENT; CORRECT?

02:42:13 10 A.   CORRECT. BUT I KNEW WHAT ARISTA CALLS AGENTS.

02:42:17 11 Q.   OKAY. AND YOU DIDN'T ACTUALLY IDENTIFY IN YOUR EXPERT

02:42:21 12 REPORT A SINGLE AGENT THAT ACTUALLY EXECUTES ANY OF THE

02:42:26 13 COMMANDS THAT YOU LISTED ON TX 599; RIGHT?

02:42:30 14 A.   WELL, AGAIN I THINK WE DISAGREE THERE. I LISTED THE

02:42:32 15 AGENTS, I THINK YOU ARE COMPLAINING THAT I DIDN'T SAY THIS

02:42:35 16 AGENT EXECUTES THIS SPECIFIC COMMAND.

02:42:37 17 Q.   OKAY. BUT YOU DIDN'T DO THAT, RIGHT, YOU DIDN'T SAY THIS

02:42:40 18 AGENT EXECUTES THIS SPECIFIC COMMAND IN YOUR EXPERT REPORT?

02:42:42 19 A.   CORRECT. I LISTED AGENTS THAT EXECUTE PRESCRIBED

02:42:44 20 COMMANDS.

02:42:45 21 Q.   OKAY.

02:42:48 22   MR. KRISHNAN: YOUR HONOR, I'M GOING TO BE MOVING ON

02:42:50 23 TO ANOTHER.

02:42:51 24   THE COURT: WANT TO TAKE A BREAK NOW? I THINK THAT'S

02:42:53 25 GOOD. WHY DON'T WE TAKE A TEN-MINUTE BREAK. THAT WILL BE A

02:42:56   1   GOOD IDEA FOR EVERYBODY.

02:43:13   2   (RECESS FROM 2:43 P.M. UNTIL 2:54 P.M.)

02:54:06   3   THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.

02:54:32   4   PLEASE BE SEATED, EVERYONE.

02:54:42   5   MR. KRISHNAN, WOULD YOU LIKE TO CONTINUE?

02:54:45   6   MR. KRISHNAN: YES. THANK YOU, YOUR HONOR.

02:54:46   7   DR. JEFFAY, I'M GOING TO ACTUALLY MOVE ON TO A NEW ELEMENT

02:54:49   8   OF THE PATENT CLAIM FROM THE ONE WE HAVE NOW BEEN TALKING

02:54:52   9   ABOUT, I'M GOING TO MOVE ON FROM THE PARSE TREE. AND COULD WE

02:54:56 10   PLEASE PUT UP SLIDE 46 FROM DR. JEFFAY'S PRESENTATION, AND

02:55:03 11   MAYBE A SIDE BY SIDE WITH, I THINK -- YEAH, THAT'S GREAT.

02:55:13 12   OKAY. AND SO THE PARSE FREE, I'M GOING TO ERASE WHAT I

02:55:20 13   DID BEFORE.

02:55:28 14   NOW, THE PARSE TREE REQUIREMENT OF THE CLAIMS STARTS OVER

02:55:32 15   HERE, THE COMMAND PARSE TREE. AND THEN THE CLAIM GIVES SOME

02:55:39 16   SPECIFICS ABOUT THE COMMAND PARSE TREE, RIGHT, DR. JEFFAY?

02:55:42 17   A.   THAT'S RIGHT.

02:55:42 18   Q.   AND BEFORE WE GET ON TO THE SPECIFICS I'M GOING TO START

02:55:45 19   ON THE COMMAND PARSE TREE ITSELF. IF WE BLOW UP THE LEFT-HAND

02:55:49 20   ONE OF THOSE TWO SLIDES.

02:55:55 21   A.   OKAY.

02:55:55 22   Q.   SO WHAT WE ARE SEEING HERE ON THE LEFT, THIS WAS FROM SOME

02:55:59 23   TESTIMONY WE SAW FROM MR. SWEENEY ON THE VIDEO OF HOW THE RULE

02:56:04 24   STRUCTURE IN EOS OPERATES; CORRECT?

02:56:06 25   A.   THAT'S CORRECT.

02:56:07 1   Q.   OKAY. AND NOW LET'S LOOK AT THE SLIDE ON THE RIGHT. AND

02:56:13 2   THIS IS YOUR DEPICTION OF HOW THAT PREVIOUS DRAWING SHOULD LOOK

02:56:20 3   IN A TREE FORM; RIGHT?

02:56:22 4   A.   RIGHT. THIS IS JUST AN EXAMPLE OF THE DRAWING BUT

02:56:25 5   DIFFERENTLY.

02:56:25 6   Q.   NOW, LET'S PUT UP SLIDE 50 FROM YOUR PRESENTATION. AND

02:56:33 7   HERE ON SLIDE 50, NOW WHAT YOU ARE DOING IS COMPARING THE

02:56:37 8   DEPICTION THAT YOU MADE OF MR. SWEENEY'S DRAWING TO FIGURE 2 OF

02:56:43 9   THE '526 PATENT, RIGHT, DR. JEFFAY?

02:56:46 10   A.   RIGHT.

02:56:46 11   Q.   AND THAT FIGURE ON THE LEFT-HAND SIDE, YOUR DEPICTION IS

02:56:52 12   THE ONE THAT YOU DREW IN PARAGRAPH 142 OF YOUR EXPERT REPORT;

02:56:56 13   RIGHT?

02:56:56 14   A.   THAT'S CORRECT.

02:56:57 15   Q.   OKAY. BUT THAT FIGURE ON THE LEFT, THAT'S NOT THE PARSE

02:57:01 16   TREE THAT YOU'RE ACCUSING OF INFRINGEMENT; CORRECT?

02:57:04 17   A.   THAT'S RIGHT. BECAUSE THIS IS NOT A REAL EOS, ABC IS NOT

02:57:09 18   A REAL EOS COMMAND.

02:57:10 19   Q.   OKAY. SO JUST TO BE CLEAR, EVEN THOUGH YOU SPENT THE TIME

02:57:14 20   AND EFFORT SHOWING THE -- SHOWING HOW MR. SWEENEY'S DRAWING

02:57:19 21   COULD BE DEPICTED IN THIS -- IN THIS BLUE PARSE TREE ON THE

02:57:24 22   LEFT, THAT BLUE PARSE TREE IS NOT ACTUALLY THE PARSE TREE YOU

02:57:26 23   ARE ACCUSING OF INFRINGEMENT?

02:57:28 24   A.   WELL, IT'S AN EXAMPLE OF A PARSE TREE IN EOS, AND IT'S AN

02:57:34 25   EXAMPLE THAT MR. SWEENEY HAS TOLD US IS REPRESENTATIVE OF TREES

02:57:38 1   AND EOS, AND THAT'S WHAT I AM ACCUSING BUT NOT THIS SPECIFIC

02:57:41 2   ONE BECAUSE, AS I SAY, ABC IS NOT A REAL EOS COMMAND.

02:57:46 3   Q.   OKAY. SO NOW LET'S PUT UP SLIDE 53 FROM DR. JEFFAY'S

02:57:51 4   DECK.

02:57:54 5   NOW THIS -- AND LET'S BLOW UP THE BOXES THAT SAY SHOW

02:58:02 6   OPENFLOW WITH ARROWS BETWEEN THEM. THIS IS THE PARSE TREE THAT

02:58:05 7   YOU ARE ACCUSING OF INFRINGEMENT; RIGHT?

02:58:08 8   A.   WELL, THIS IS JUST THE EXAMPLE OF THE COMMANDS. THIS

02:58:11 9   ISN'T THE PARSE TREE PER SE. THIS IS JUST SHOWING THE FLOW OF

02:58:14 10   THE PARSE GOING FROM SHOW TO OPENFLOW TO FLOWS.

02:58:18 11   Q.   OKAY. SO ACTUALLY YOU HAVEN'T DEPICTED ANYWHERE THE PARSE

02:58:22 12   TREE THAT YOU ARE ACCUSING OF INFRINGEMENT; RIGHT?

02:58:26 13   A.   I'M RELYING ON THE FACT THAT MR. SWEENEY HAS SAID THAT EOS

02:58:31 14   USES A HIERARCHICAL DATA STRUCTURE WHICH SATISFIES THE COURT'S

02:58:38 15   CONSTRUCTION FOR COMMAND PARSE TREES.

02:58:41 16   Q.   I UNDERSTAND THAT, BUT THAT WASN'T MY QUESTION.

02:58:43 17   YOU JUST TESTIFIED THAT THIS WAS NOT THE PARSE TREE THAT

02:58:45 18   YOU ARE ACCUSING OF INFRINGEMENT; RIGHT?

02:58:47 19   A.   CORRECT.

02:58:47 20   Q.   AND YOU ALSO TESTIFIED THAT OF THE LAST FIGURE THAT CAME

02:58:49 21   FROM PARAGRAPH 142 OF YOUR REPORT IS ALSO NOT THE PARSE TREE

02:58:54 22   YOU ARE ACCUSING OF INFRINGEMENT; RIGHT?

02:58:56 23   A.   SO THE PREVIOUS ONE IS AN EXAMPLE THAT MR. SWEENEY HAS

02:59:01 24   TOLD US THAT REPRESENTATIVE OF THE PARSE TREE THAT GETS

02:59:03 25   CONSTRUCTED.

02:59:03   1   SO I'M USING THAT AS EVIDENCE THAT IN EOS, THAT IN FACT IT

02:59:08   2   SATISFIES THE COMMAND PARSE TREE LIMITATION.

02:59:10   3   Q.   OKAY. SO I'M JUST HAVING A LITTLE PROBLEM. I'M NOT

02:59:13   4   UNDERSTANDING IF YOU ARE TAKING BACK YOUR PREVIOUS TESTIMONY

02:59:16   5   BECAUSE I BELIEVE YOU PREVIOUSLY TESTIFIED THAT THE FIGURE 142

02:59:19   6   PARSE TREE, IF WE COULD PUT THAT PARAGRAPH 142 PARSE TREE, IF

02:59:24   7   WE COULD PUT THAT UP. IT'S -- IT WAS ON SLIDE 46 -- SORRY. A

02:59:35   8   LITTLE FURTHER, MAYBE 2 OR 3 SLIDES FURTHER, THAT ONE. I

02:59:39   9   BELIEVE YOU PREVIOUSLY TESTIFIED THAT THAT IS NOT -- IT IS THE

02:59:42   10   PARSE TREE YOU ARE ACCUSING OF INFRINGEMENT. ARE YOU CHANGING

02:59:45   11   YOUR TESTIMONY, OR NO?

02:59:46   12   A.   NO. THIS SPECIFIC FIGURE, WHAT I'M SAYING IS DOES NOT

02:59:50   13   REPRESENT THE REAL EOS COMMAND. SO I CAN'T USE THIS SPECIFIC

02:59:54   14   FIGURE.

02:59:55   15   WHAT I'M RELYING ON WITH THAT, IS THAT MR. SWEENEY HAS

03:00:00   16   SAID THAT WHAT EOS USES IS A TREE, WHICH IS A HIERARCHICAL DATA

03:00:06   17   STRUCTURE. THIS IS AN EXAMPLE THAT HE DREW. I'M NOT ACCUSING

03:00:09   18   THIS SPECIFIC EXAMPLE, BUT TO SHOW THE PRESENCE OF THAT

03:00:13   19   LIMITATION, THAT'S WHAT I'M RELYING ON.

03:00:15   20   Q.   SO I'M ASKING A SLIGHTLY DIFFERENT QUESTION WHICH IS THAT,

03:00:18   21   NOWHERE THEN, HAVE YOU DEPICTED THE ACTUAL PARSE TREE THAT YOU

03:00:22   22   ARE ACCUSING OF INFRINGEMENT, RIGHT?

03:00:24   23   A.   NO, I'M JUST RELYING ON MR. SWEENEY'S REPRESENTATION AND

03:00:27   24   HIS EXAMPLE FIGURE.

03:00:29   25   Q.   OKAY. NOW, I'M GOING TO MOVE ON TO THE REST OF THE CLAIM

03:00:31 1   ELEMENT THAT WE WERE JUST DISCUSSING, IT'S THE COMMAND PARSE

03:00:35 2   TREE, AND NOW I'M GOING TO EXTEND THIS FURTHER, AND I DON'T

03:00:41 3   LIKE MY ABILITY TO DRAW STRAIGHT LINES.

03:00:44 4   SO I'M JUST GOING TO DO BRACKETS LIKE THIS. I WILL READ

03:00:51 5   OUT THE LANGUAGE I WILL TRY TO EMPHASIZE.

03:01:06 6   SO I'VE NOW CIRCLED THE LANGUAGE THAT SAYS "THE COMMAND

03:01:13 7   PARSE TREE HAVING ELEMENTS, EACH SPECIFYING AT LEAST ONE

03:01:18 8   CORRESPONDING GENERIC COMMAND COMPONENT AND AT LEAST ONE

03:01:24 9   CORRESPONDING COMMAND ACTION VALUE."

03:01:26 10   YOU ARE FAMILIAR WITH THAT REQUIREMENT, DR. JEFFAY.

03:01:29 11   A.   YES.

03:01:30 12   Q.   SO WHY DON'T WE PUT UP AGAIN THE CLAIM CONSTRUCTION CHART

03:01:34 13   WHICH IS IN THE JUROR NOTEBOOK. AND LET'S LOOK AT THAT LAST

03:01:37 14   DEFINITION. THANK YOU.

03:01:39 15   AND I'M JUST GOING TO FIRST FOCUS, THIS ONE IS A LITTLE

03:01:43 16   CONFUSING BECAUSE THERE ARE TWO DIFFERENT DEFINITIONS THERE.

03:01:45 17   I'M GOING TO FIRST FOCUS ON THE SECOND ONE WHICH IS THE

03:01:48 18   DEFINITION OF THE ENTIRE PHRASE THAT I'VE CIRCLED HERE ON THE

03:01:51 19   BOARD.

03:01:52 20   AND THAT CONSTRUCTION READS, THE COMMAND PARSE TREE HAVING

03:01:57 21   ELEMENTS SUCH THAT EACH ELEMENT SPECIFIES AT LEAST ONE COMMAND

03:02:02 22   ACTION VALUE FOR EACH GENERIC COMMAND COMPONENT.

03:02:05 23   THAT'S THE COURT'S CONSTRUCTION FOR THAT ENTIRE PHRASE;

03:02:08 24   RIGHT?

03:02:08 25   A.   THAT'S CORRECT.

03:02:09   1   Q.   AND SO THAT CONSTRUCTION MEANS THAT EVERY GENERIC COMMAND

03:02:14   2   COMPONENT IN THE PARSE TREE FOR EACH ONE OF THOSE, THERE MUST

03:02:19   3   BE AT LEAST ONE COMMAND ACTION VALUE; RIGHT?

03:02:23   4   A.   THAT'S HOW I READ IT.

03:02:24   5   Q.   OKAY. AND IN THE CONTEXT OF YOUR INFRINGEMENT THEORY, THE

03:02:31   6   GENERIC COMMAND COMPONENTS ARE THE INDIVIDUAL WORDS OF THE EOS

03:02:33   7   GENERIC COMMANDS ON YOUR LIST; RIGHT?

03:02:36   8   A.   YES.

03:02:36   9   Q.   SO THIS CONSTRUCTION REQUIRES THAT FOR EVERY WORD ON YOUR

03:02:42   10 LIST, YOU HAVE TO IDENTIFY A CORRESPONDING COMMAND ACTION

03:02:48   11 VALUE; RIGHT?

03:02:49   12   A.   CORRECT.

03:02:49   13   Q.   AND THEN I WILL JUST READ THE CONSTRUCTION FOR COMMAND

03:02:53   14 ACTION VALUE SINCE WE ARE ON THIS SCREEN, IT IS A VALUE THAT

03:02:57   15 IDENTIFIES A PRESCRIBED COMMAND. AND THAT'S THE CONSTRUCTION

03:03:01   16 YOU USED FOR COMMAND ACTION VALUE AS WELL; RIGHT?

03:03:04   17   A.   THAT'S RIGHT.

03:03:04   18   Q.   OKAY. NOW, LET'S GO TO FIGURE 2 OF THE PATENT, TX 95, AND

03:03:12   19 LET'S BLOW UP THE BOTTOM PORTION, THE PARSE TREE SHOWN THERE.

03:03:17   20   SO THIS IS THE EMBODIMENT OF THE PARSE TREE IN THE

03:03:23   21 FIGURE 2 PATENT THAT YOU DISCUSSED DURING DIRECT EXAMINATION;

03:03:25   22 RIGHT?

03:03:25   23   A.   THAT'S CORRECT.

03:03:25   24   Q.   OKAY. AND JUST TO GET SOME TERMINOLOGY STRAIGHT, THERE

03:03:31   25 ARE T'S AND CK'S IN THAT DRAWING; RIGHT?

03:03:35 1   A.   THAT'S CORRECT.

03:03:36 2   Q.   THE T'S STAND FOR TOKENS?

03:03:39 3   A.   THAT'S CORRECT.

03:03:39 4   Q.   AND THOSE TOKENS CORRESPOND TO WORDS OF A COMMAND THAT A

03:03:47 5   USER MIGHT INPUT; RIGHT?

03:03:48 6   A.   THAT'S RIGHT.

03:03:49 7   Q.   AND IN THE LANGUAGE AND SO THOSE WORDS OF THE COMMANDS,

03:04:04 8   THOSE CORRESPOND TO THE GENERIC COMMAND COMPONENTS IN THE CLAIM

03:04:09 9   LANGUAGE; RIGHT?

03:04:09 10   A.   YES.

03:04:09 11   Q.   AND THEN COULD WE PUT THE FIGURE 23 BACK UP, PLEASE.

03:04:17 12   MAYBE WE CAN'T.

03:04:20 13   MR. VAN NEST: WE WILL, WE WILL.   OUR SYSTEM IS SLOW.

03:04:30 14   Q.   SO LET'S BLOW UP THE TREE AGAIN.   GREAT.   SO WE HAVE THE

03:04:36 15   T'S, THE CK'S, THOSE ARE COMMAND KEYS; RIGHT?

03:04:39 16   A.   CORRECT.

03:04:39 17   Q.   AND THOSE CORRESPOND IN THE LANGUAGE OF THE CLAIM TO

03:04:44 18   COMMAND ACTION VALUES; RIGHT?

03:04:45 19   A.   CORRECT.

03:04:46 20   Q.   AND THE COMMAND ACTION VALUE IS DOWN HERE; RIGHT?

03:04:51 21   A.   YEP.

03:04:52 22   Q.   AND YOU SEE HERE FOR EVERY T YOU HAVE AT LEAST ONE CK;

03:04:56 23   RIGHT?

03:04:56 24   A.   THAT'S RIGHT.

03:04:57 25   Q.   AND SO THAT REFLECTS THE REQUIREMENT IN THE CLAIMS THAT

03:05:00 1   FOR EVERY GENERIC COMMAND COMPONENT THERE MUST BE AT LEAST ONE

03:05:04 2   COMMAND ACTION VALUE; RIGHT?

03:05:05 3   A.   THAT'S RIGHT.

03:05:06 4   Q.   AND IT'S BECAUSE OF THIS REQUIREMENT THAT THE PARSE TREE

03:05:11 5   EMBODIMENT DESCRIBED IN THE '526 PATENT CAN HANDLE GENERIC

03:05:16 6   COMMANDS WHERE ONLY A PORTION OF THE COMMAND IS VALID; RIGHT?

03:05:22 7   A.   I DON'T KNOW THAT IT UNIQUELY DERIVES FROM THAT ASPECT OF

03:05:26 8   THE TREE.

03:05:26 9   Q.   WELL, PUT ASIDE UNIQUELY DERIVED. IT'S AT LEAST IN PART

03:05:31 10 BECAUSE OF THE REQUIREMENT THAT EVERY GENERIC COMMAND HAS A

03:05:33 11 CORRESPONDING COMMAND ACTION VALUE THAT THIS PARSE TREE

03:05:38 12 EMBODIMENT IS ABLE TO HANDLE COMMANDS THAT ARE ONLY PARTIALLY

03:05:42 13 VALID; RIGHT?

03:05:43 14 A.   I DON'T KNOW THAT I AGREE WITH YOU THAT IT'S A

03:05:45 15 REQUIREMENT.

03:05:45 16 Q.   I'M NOT ASKING WHETHER IT'S A REQUIREMENT. WHAT I'M

03:05:48 17 ASKING IS, IS IT AT LEAST IN PART, BECAUSE OF THIS REQUIREMENT,

03:05:54 18 THAT THIS PARTICULAR EMBODIMENT IS ABLE TO HANDLE COMMANDS

03:05:59 19 WHERE ONLY A PORTION OF THE COMMAND IS VALID?

03:06:01 20 A.   I THINK YOU ARE REVERSE ENGINEERING THE FIGURE AND MAKING

03:06:04 21 AN INFERENCE. I DON'T KNOW THAT, YOU KNOW, DERIVING THIS FROM

03:06:11 22 THIS FIRST PRINCIPLE, THAT THAT NECESSARY FOLLOWS.

03:06:14 23 Q.   OKAY. WELL, WHY DON'T WE LOOK AT SOME TEXT. BUT BEFORE

03:06:17 24 WE GET THERE, IT'S AT LEAST TRUE, DR. JEFFAY, YOU RECOGNIZE

03:06:22 25 THAT THIS PARTICULAR PARSE TREE CAN HANDLE GENERIC COMMANDS

03:06:23 1   WHERE ONLY A PORTION OF THE COMMAND IS VALID; RIGHT?

03:06:25 2   A.   YES.

03:06:25 3   Q.   AND WHY DON'T WE LOOK AT AN EXAMPLE, LET'S FIRST GO TO

03:06:31 4   COLUMN THREE, LINES 57 TO 61.   THERE WE GO.

03:06:43 5   AND I WILL START READING THE FIRST HALF OF THAT SENTENCE,

03:06:46 6   IF ONLY A PORTION OF THE GENERIC COMMAND IS IDENTIFIED AS

03:06:50 7   VALID, EG, ONLY THE FIRST THREE COMMAND WORDS ARE VALID, SO WE

03:06:54 8   ARE TALKING HERE ABOUT A SCENARIO WHERE AN INVALID COMMAND IS

03:06:59 9   ENTERED BUT ONLY THE FIRST THREE COMMANDS OF THE WORD ARE

03:07:03 10   VALID; RIGHT?

03:07:04 11   A.   THAT'S THE EXAMPLE THAT'S BEING DISCUSSED.

03:07:07 12   Q.   RIGHT.   AND SO IN THAT EXAMPLE, THE PARSER SELECTS THE

03:07:10 13   COMMAND KEY FOR THE MATCHING TOKEN FROM THE LAST VALID TREE

03:07:15 14   ELEMENT; RIGHT?

03:07:16 15   A.   RIGHT.

03:07:16 16   Q.   AND IT CAN DO THAT BECAUSE THERE IS A COMMAND KEY FOR THE

03:07:22 17   MATCHING TOKEN FROM THE LAST VALID TREE ELEMENT; RIGHT?

03:07:25 18   A.   YES.

03:07:25 19   Q.   AND AS WE SAW IN THE FIGURE JUST NOW, THAT IS A REFLECTION

03:07:33 20   OF THE REQUIREMENT IN THE CLAIMS THAT THERE IS A COMMAND ACTION

03:07:37 21   VALUE FOR EACH GENERIC COMMAND COMPONENT; RIGHT?

03:07:42 22   A.   THE FACT THAT THERE'S A COMMAND KEY FOR EACH TOKEN, YES.

03:07:45 23   Q.   OKAY.   SO NOW LET'S MOVE ON TO SOME OTHER TEXT, IT'S ONE

03:07:50 24   COLUMN OVER, COLUMN 4, LINES 37 TO 54.   AND THIS IS NOW TALKING

03:07:57 25   ABOUT A SPECIFIC EXAMPLE.   THIS IS THE EXAMPLE OF THE PHRASE

03:08:00 1   GET UDP CONNECTION INFO.

03:08:02 2   YOU ARE FAMILIAR WITH THIS EXAMPLE, DR. JEFFAY?

03:08:04 3   A.   YES.

03:08:04 4   Q.   AND COULD WE HIGHLIGHT THE WORDS GET UDP CONNECTION INFO.

03:08:11 5   THANK YOU. NOW, IN THIS EXAMPLE THAT'S AN INVALID COMMAND?

03:08:16 6   A.   THAT'S CORRECT.

03:08:16 7   Q.   AND IT'S AN INVALID COMMAND BECAUSE EVEN THOUGH THE FIRST

03:08:21 8   WORD GET IS VALID, THE SECOND WORD UDP IS AN INVALID WORD TO

03:08:24 9   FOLLOW GET; RIGHT?

03:08:25 10   A.   CORRECT.

03:08:26 11   Q.   SO IN THIS EXAMPLE, THE PARSER WILL SELECT THE COMMAND

03:08:31 12   ACTION VALUE ASSOCIATED WITH THE LAST VALID WORD IN THE

03:08:37 13   COMMAND; RIGHT?

03:08:38 14   A.   IN THE EXAMPLE, YES.

03:08:39 15   Q.   AND THAT IS THE COMMAND ACTION VALUE ASSOCIATED WITH THE

03:08:43 16   WORD "GET;" RIGHT?

03:08:45 17   A.   CORRECT.

03:08:54 18   Q.   AND JUST TO MAKE THIS PART -- ONCE AGAIN, THIS IS AN

03:08:56 19   EXAMPLE WHERE THE FIRST WORD IS VALID AND THE SECOND WORD IS

03:08:59 20   INVALID IN THE COMMAND; RIGHT?

03:09:02 21   A.   THAT'S CORRECT.

03:09:02 22   Q.   NOW, LET'S MOVE ON BACK TO TX 599. THIS IS OUR FAMILIAR

03:09:07 23   LIST OF 77 COMMANDS. AND LET'S FOCUS ON THE LEFT-HAND COLUMN,

03:09:15 24   THE GENERIC COMMANDS. LET'S BLOW UP SOME OF THOSE. OKAY.

03:09:20 25   SO I COUNTED THAT OF THE 77 COMMANDS IN YOUR CHART, 65

03:09:24 1   START WITH THE WORD SHOW. DOES THAT SEEM ABOUT RIGHT TO YOU?

03:09:27 2   A.   YES.

03:09:28 3   Q.   OKAY. SO UNDER YOUR INFRINGEMENT THEORY, THERE ARE AT

03:09:31 4   LEAST 65 COMMAND ACTION VALUES ASSOCIATED WITH THE WORD SHOW;

03:09:36 5   RIGHT?

03:09:36 6   A.   YES.

03:09:39 7   Q.   OKAY. AND THOSE COMMAND ACTION VALUES ARE EOS VALUE

03:09:43 8   FUNCTIONS; RIGHT?

03:09:45 9   A.   YES.

03:09:45 10   Q.   OKAY. SO THOSE 65 VALUE FUNCTIONS CORRESPOND TO ALL OF

03:09:50 11   THE COMMANDS THAT COULD POTENTIALLY BE EXECUTED IF THE USER

03:09:54 12   TYPED IN THE WORD SHOW AS THE BEGINNING OF THE COMMAND; RIGHT?

03:09:58 13   A.   CORRECT.

03:09:58 14   Q.   OKAY. SO I NOW WANT TO TALK ABOUT THE SITUATION IN EOS

03:10:03 15   WHERE THE USER TYPES IN THE WORD SHOW AND THEN PRESSES ENTER.

03:10:08 16   DO YOU UNDERSTAND THAT HYPOTHETICAL?

03:10:10 17   A.   SURE.

03:10:10 18   Q.   OKAY. AND I WANT TO ACTUALLY ASK YOU TO LOOK AT --

03:10:13 19   THERE'S A TAB IN YOUR BINDER CALLED DEMO SHOW. DO YOU SEE

03:10:20 20   THAT?

03:10:21 21   A.   NO, I DON'T. OH, SORRY. I DO. DEMO SHOW, SORRY.

03:10:26 22   Q.   AND I WILL REPRESENT TO YOU THAT THIS IS A SCREEN SHOT OF

03:10:29 23   WHAT HAPPENS IN EOS WHEN SOMEONE TYPES IN THE WORD SHOW AND

03:10:34 24   THEN PRESSES ENTER, DOES THAT APPEAR TO BE AN ACCURATE

03:10:38 25   DEPICTION OF WHAT HAPPENS IN EOS?

03:10:40   1   A.   YES.

03:10:40   2   MR. KRISHNAN: YOUR HONOR, I WOULD LIKE TO PUBLISH

03:10:42   3   THIS DEMONSTRATION TO THE JURY THEN.

03:10:43   4   THE COURT: ANY OBJECTION?

03:10:44   5   MR. PAK: NO OBJECTION, YOUR HONOR.

03:10:46   6   THE COURT: THANK YOU. GO AHEAD.

03:10:48   7   BY MR. KRISHNAN:

03:10:48   8   Q.   SO IN THIS EXAMPLE WHERE THE USER TYPES IN THE WORD SHOW,

03:10:53   9   AND THEN PRESSES ENTER, THE USER GETS AN ERROR MESSAGE THAT

03:11:01 10   SAYS INCOMPLETE COMMAND; RIGHT?

03:11:02 11   A.   YES.

03:11:03 12   Q.   AND IN THIS SITUATION, NONE OF THE 65 COMMAND ACTION

03:11:11 13   VALUES THAT YOU OPINE ARE ASSOCIATED WITH THE WORD SHOW GETS

03:11:17 14   SELECTED BY THE PARSER; RIGHT?

03:11:19 15   A.   THAT'S RIGHT.

03:11:20 16   Q.   NOT ONE?

03:11:22 17   A.   IT'S NOT AN INTERESTING -- IT'S ABSOLUTELY TRUE BUT I

03:11:24 18   DON'T THINK IT'S AN INTERESTING OBSERVATION.

03:11:26 19   Q.   OKAY. NOW, UNDER YOUR THEORY, THE TOKEN SHOW IS A GENERIC

03:11:30 20   COMMAND COMPONENT; RIGHT?

03:11:31 21   A.   YES.

03:11:32 22   Q.   AND THE PATENT REQUIRES AT LEAST ONE COMMAND ACTION VALUE

03:11:36 23   FOR EVERY GENERIC COMMAND COMPONENT; RIGHT?

03:11:38 24   A.   YES.

03:11:39 25   Q.   OKAY. AND IN THIS EXAMPLE, WHEN THE USER JUST TYPES IN

03:11:45   1   THE WORD SHOW AND PRESSES ENTER, NO COMMAND ACTION VALUE IS

03:11:48   2   SELECTED BY THE PARSER; RIGHT?

03:11:51   3   A.   I BELIEVE THAT'S CORRECT.

03:11:52   4   Q.   OKAY. AND YOU WILL AGREE THAT IF THE JURY FINDS THAT YOU

03:11:56   5   HAVE FAILED TO PROVE THAT THERE'S A COMMAND ACTION VALUE FOR

03:12:00   6   THE TOKEN SHOW, THEN YOU HAVE FAILED TO ESTABLISH INFRINGEMENT;

03:12:05   7   RIGHT?

03:12:05   8   A.   IF I HAVEN'T SHOWN THERE'S A COMMAND ACTION VALUE FOR THE

03:12:08   9   TOKEN SHOW, THEN, YES, THAT'S CORRECT.

03:12:10   10   Q.   OKAY. NOW, THERE'S ANOTHER -- I THINK IF YOU JUST FLIP

03:12:14   11   THE PAGE THERE'S A TAB CALLED SHOW AIRPLANE?

03:12:17   12   A.   YEAH.

03:12:18   13   Q.   DOES THIS APPEAR TO YOU TO BE A CORRECT DEPICTION OF WHAT

03:12:22   14   WOULD HAPPEN IN EOS IF SOMEONE TYPED IN THE WORDS SHOW AIRPLANE

03:12:25   15   AND THEN PRESSED ENTER?

03:12:26   16   A.   YES -- WELL, IT'S A LITTLE LONGER EXAMPLE, BUT YES.

03:12:30   17   Q.   OKAY.

03:12:31   18   MR. KRISHNAN: YOUR HONOR, I WOULD ASK TO PUBLISH

03:12:35   19   THIS TO THE JURY.

03:12:35   20   THE COURT: NO OBJECTION.

03:12:37   21   MR. PAK: YES.

03:12:40   22   BY MR. KRISHNAN:

03:12:40   23   Q.   SO NOW IN THIS EXAMPLE AGAIN -- SO, FIRST OF ALL, THIS IS

03:12:43   24   AN EXAMPLE OF AN INVALID COMMAND, RIGHT, DR. JEFFAY?

03:12:46   25   A.   CORRECT.

03:12:46 1   Q.   AND THE USER GETS AN ERROR MESSAGE THAT SAYS INVALID

03:12:51 2   INPUT?

03:12:51 3   A.   CORRECT.

03:12:52 4   Q.   AND THIS IS AN INVALID COMMAND WHERE THE FIRST WORD SHOW

03:12:55 5   IS VALID BUT THE SECOND WORD AIRPLANE IS INVALID; RIGHT?

03:13:00 6   A.   RIGHT.

03:13:00 7   Q.   OKAY. AND HERE AGAIN NO COMMAND ACTION VALUE, NONE OF THE

03:13:06 8   65 COMMAND ACTION VALUES THAT YOU OPINE ARE CONNECTED WITH THE

03:13:10 9   WORD SHOW GETS SELECTED BY THE PARSER; RIGHT?

03:13:13 10   A.   THAT'S RIGHT. AND I WILL POINT OUT THAT YOUR EXAMPLE IS

03:13:16 11   ENTIRELY CONSISTENT AND IS EXACTLY WHAT'S DESCRIBED IN THE

03:13:20 12   PATENT FOR PRECISELY THE EXAMPLE THAT WE HAVE BEEN TALKING

03:13:22 13   ABOUT. SO WHAT'S HAPPENING HERE IN THE EOS IS EXACTLY WHAT'S

03:13:26 14   TAUGHT IN THE PATENT.

03:13:27 15   Q.   WELL, LET'S GET TO THAT. AND WHY DO YOU SAY THAT THAT'S

03:13:31 16   SO, DR. JEFFAY.

03:13:32 17   A.   IF WE LOOK AT COLUMN 4, WHICH WAS STARTING AT LINES --

03:13:36 18   SORRY, 38, WHICH IS THE EXAMPLES YOU WERE LOOKING AT GET UDP

03:13:41 19   CONNECTION INFO. IF YOU READ TO THE BOTTOM OF THE PARAGRAPH,

03:13:44 20   IT SAYS THAT IF THE SELECTED RESOURCE DETERMINES THAT THE

03:13:48 21   COMMAND IS INVALID --

03:13:49 22   THE COURT: YOU HAVE TO SLOW DOWN.

03:13:51 23   MR. KRISHNAN: AND ACTUALLY BEFORE YOU CONTINUE --

03:13:53 24   THE COURT: WE ARE NOT JUST LOOKING AT IT. WE ARE

03:13:55 25   TRYING TO ABSORB.

03:13:55 1   MR. KRISHNAN: I'M SORRY, CAN I ASK TO HAVE THAT

03:13:57 2   LANGUAGE DISPLAYED SO THAT WE ARE ALL READING TOGETHER.

03:14:00 3   Q.   SO I THINK WE ARE ALL LOOKING AT COLUMN 4 OF THE PATENT?

03:14:04 4

03:14:04 5   A.   CORRECT. AND THE PART THAT I WAS REFERRING TO ALIGNS --

03:14:12 6   Q.   LET'S DO 37 TO 53 AGAIN, THAT WHOLE PARAGRAPH.

03:14:14 7   AND NOW, YOU ARE READING AT THE BOTTOM OF THAT PARAGRAPH;

03:14:17 8   RIGHT?

03:14:17 9   A.   RIGHT.

03:14:18 10   Q.   IT SAYS, AND LET'S HIGHLIGHT THE LANGUAGE, "IF THE

03:14:21 11   SELECTED RESOURCE 18 DETERMINES THAT THE COMMAND IS INVALID,

03:14:24 12   THE SELECTED RESOURCE AT THAT TIME MAY PROMPT THE USER FOR A

03:14:28 13   CORRECT COMMAND;" RIGHT?

03:14:30 14   A.   CORRECT.

03:14:30 15   Q.   OKAY. NOW IN THAT SITUATION, THE PARSER IN FIGURE 2 HAS

03:14:38 16   SELECTED A COMMAND ACTION VALUE; RIGHT?

03:14:43 17   A.   YES.

03:14:44 18   Q.   OKAY. BUT THE USER GETS AN ERROR MESSAGE FROM THE

03:14:48 19   MANAGEMENT PROGRAM; RIGHT?

03:14:49 20   A.   CORRECT.

03:14:50 21   Q.   OKAY. NOW, IN THE EOS EXAMPLE THAT WE JUST GAVE OF SHOW

03:14:54 22   AIRPLANES, NO COMMAND ACTION VALUE IS SELECTED; RIGHT?

03:15:00 23   A.   THAT'S CORRECT.

03:15:01 24   Q.   OKAY. SO -- AND NOW LET'S TALK ABOUT THE -- AND CERTAINLY

03:15:06 25   THE ERROR MESSAGE IN EOS, THE INVALID INPUT ERROR MESSAGE,

03:15:10   1   THAT'S NOT COMING FROM MANAGEMENT PROGRAM; RIGHT?

03:15:12   2   A.   NO.   BUT IT'S THE SAME RESULT.

03:15:14   3   Q.   OKAY.   I UNDERSTAND.   LET'S TALK ABOUT WHETHER IT'S THE

03:15:17   4   SAME RESULT.   IN THIS LANGUAGE DOWN HERE, IT SAYS IF THE

03:15:23   5   SELECTED RESOURCE DETERMINES THAT THE COMMAND IS INVALID, THE

03:15:26   6   SELECTED RESOURCE AT THAT TIME MAY PROMPT THE USER FOR A

03:15:30   7   CORRECT COMMAND; RIGHT?

03:15:31   8   A.   YES.

03:15:32   9   Q.   SO IN THIS EXAMPLE THE USER WILL NOT NECESSARILY GET AN

03:15:37   10   ERROR MESSAGE; RIGHT?

03:15:38   11   A.   IF YOU READ IT THAT FINELY, THAT'S WHAT IT SAYS.

03:15:44   12   Q.   IT DOESN'T SAY THAT THE USER WILL ALWAYS GET AN ERROR

03:15:46   13   MESSAGE.   IT SAYS THAT THEY MAY BE PROMPTED FOR A CORRECT

03:15:50   14   COMMAND; RIGHT?

03:15:50   15   A.   BUT ALWAYS GETTING AN ERROR MESSAGE IS CONSISTENT WITH MAY

03:15:53   16   PROMPT.

03:15:55   17   Q.   OKAY.   SO YOU ARE READING THE MAY PROMPT THE USER FOR A

03:16:00   18   CORRECT COMMAND AS ALWAYS GETTING A CORRECT COMMAND?

03:16:02   19   A.   THAT'S NOT WHAT I SAID.   WHAT I SAID IS THE BEHAVIOR

03:16:04   20   THAT'S SHOWN IN YOUR EXAMPLE IS CONSISTENT WITH THIS TEXT.

03:16:06   21   Q.   OKAY.   BUT LET'S JUST PIN DOWN ONE POINT HERE WHICH IS

03:16:10   22   THAT IN THIS EXAMPLE FROM THE PATENT, THE USER MAY GET AN ERROR

03:16:13   23   MESSAGE; RIGHT?

03:16:14   24   A.   YES, THAT'S WHAT THE LANGUAGE SAYS.

03:16:16   25   Q.   OKAY.   NOW, IN EOS IF THE USER TYPES IN A VALID FIRST

03:16:21 1   WORD, AND THEN AN INVALID SECOND WORD, THE USER ALWAYS GET BE

03:16:27 2   AN ERROR MESSAGE; RIGHT?

03:16:29 3   A.   YES.

03:16:30 4   Q.   OKAY.

03:16:34 5   NOW LET'S -- WE ARE JUST MOVING ON TO A FEW LAST TOPICS

03:16:38 6   HERE.

03:16:40 7   YOU'VE PROVIDED, DR. JEFFAY, AN OPINION THAT ARISTA EITHER

03:16:45 8   KNEW OR SHOULD HAVE KNOWN THAT ITS CONDUCT INFRINGES THE '526

03:16:49 9   PATENT; RIGHT?

03:16:49 10   A.   THAT'S CORRECT.

03:16:50 11   Q.   AND THAT OPINION FROM YOU IS PRIMARILY BASED ON THE FACT

03:16:54 12   THAT CISCO FILED THE COMPLAINT IN THIS CASE; RIGHT?

03:16:57 13   A.   YES.

03:16:57 14   Q.   IN FACT, AT YOUR DEPOSITION THAT WAS THE ONLY FACT THAT

03:17:00 15   YOU WERE ABLE TO SUPPLY THAT ARISTA EITHER KNEW OR SHOULD HAVE

03:17:05 16   KNOWN THAT IT INFRINGES THE '526 PATENT; RIGHT?

03:17:08 17   A.   YES, THAT'S CORRECT.

03:17:09 18   Q.   YOU COULDN'T CITE TO ANY ARISTA INTERNAL E-MAILS; RIGHT?

03:17:13 19   A.   CORRECT.

03:17:13 20   Q.   EVEN THOUGH CISCO HAD ACCESS TO ARISTA'S INTERNAL E-MAILS,

03:17:22 21   YOU DIDN'T CITE TO ANY OF THOSE; RIGHT?

03:17:23 22   A.   NO. I ONLY CITED TO THE COMPLAINT.

03:17:25 23   Q.   AND YOU DIDN'T CITE ANY EVIDENCE THAT ARISTA ENGINEERS

03:17:28 24   WERE LOOKING AT THE '526 PATENT; RIGHT?

03:17:30 25   A.   CORRECT.

03:17:31   1   Q.   AND YOU DIDN'T CITE TO ANY EVIDENCE THAT ARISTA ENGINEERS

03:17:33   2   WERE LOOKING AT ANY CISCO PRODUCTS LIKE THE IOS XR; RIGHT?

03:17:37   3   A.   CORRECT.

03:17:38   4   Q.   OKAY. NOW, YOU'VE SERVED AS AN EXPERT IN PATENT CASES A

03:17:42   5   LARGE NUMBER OF TIMES, RIGHT, DR. JEFFAY?

03:17:45   6   A.   THAT'S A FAIR STATEMENT.

03:17:46   7   Q.   ROUGHLY HOW MANY?

03:17:48   8   A.   I COULDN'T SAY. I THINK I'VE TESTIFIED MAYBE 15, 20

03:17:53   9   TIMES.

03:17:53   10   Q.   BUT HOW MANY TIMES HAVE YOU ACTUALLY SERVED AS AN EXPERT

03:17:56   11   IN A PATENT CASE?

03:17:57   12   A.   PROBABLY AT LEAST TWICE THAT MANY.

03:17:59   13   Q.   OKAY. SO MAYBE -- AT LEAST 30 TIMES?

03:18:01   14   A.   YES.

03:18:02   15   Q.   OKAY. NOW -- AND HOW MANY TIMES ON THE SIDE OF THE

03:18:06   16   DEFENDANT?

03:18:08   17   A.   PROBABLY A LITTLE MORE THAN 50 PERCENT.

03:18:11   18   Q.   OKAY. SO YOU KNOW, DR. JEFFAY, THAT JUST BECAUSE SOMEONE

03:18:14   19   GETS SUED FOR PATENT INFRINGEMENT AND THERE'S A COMPLAINT, THAT

03:18:18   20   DOESN'T NECESSARILY MEAN THAT THEY'RE ACTUALLY INFRINGING THE

03:18:20   21   PATENT; RIGHT?

03:18:21   22   A.   I'M NOT A LEGAL EXPERT. I DO NOT KNOW EXACTLY WHAT THE

03:18:25   23   LEGAL STANDARD IS THERE.

03:18:27   24   Q.   WELL, THIS ONE I'M NOT SURE YOU HAVE TO BE A LEGAL EXPERT

03:18:30   25   FOR. YOU KNOW THAT WHEN SOMEONE GETS SUED IN A PATENT CASE, IT

03:18:34   1   DOES NOT NECESSARILY MEAN THAT THEY ARE INFRINGING THE PATENT;

03:18:38   2   RIGHT?

03:18:38   3   A.   YOU ARE ABSOLUTELY RIGHT. I MISHEARD YOUR QUESTION.

03:18:41   4   THAT'S ABSOLUTELY CORRECT.

03:18:42   5   Q.   LET ALONE DOES IT PROVE THAT THE PERSON ACTUALLY BELIEVES

03:18:45   6   THAT THEY ARE INFRINGING THE PATENT; RIGHT?

03:18:47   7   A.   CORRECT.

03:18:48   8   Q.   THE COMPLAINT IS NOT -- THE FACT THAT SOMEONE GETS SUED

03:18:51   9   AND GETS A COMPLAINT, THAT'S NOT EVIDENCE THAT THE PERSON

03:18:55   10   BELIEVES THEY ARE INFRINGING THE PATENT; RIGHT?

03:18:57   11   A.   WELL, IT'S EVIDENCE THAT SOMEONE BELIEVES THAT THEY ARE

03:18:59   12   INFRINGING THE PATENT.

03:19:00   13   Q.   YEAH, BUT HERE YOU'VE PRESENTED EVIDENCE -- YOU'VE PUT

03:19:03   14   FORTH THE OPINION THAT ARISTA BELIEVED THAT IT WAS INFRINGING

03:19:07   15   THE '526 PATENT BASED ON A COMPLAINT THAT IT RECEIVED FROM

03:19:12   16   CISCO; RIGHT?

03:19:12   17   A.   I GUESS I WASN'T USING THE WORD BELIEVE. I BELIEVE WHAT I

03:19:16   18   WAS SAYING IS THEY HAD -- THEY KNEW OF THIS ALLEGATION.

03:19:19   19   Q.   OH. SO YOUR ONLY OPINION IS THAT THEY KNEW OF THE

03:19:22   20   ALLEGATION, NOT THAT THEY KNEW THAT THEY WERE INFRINGING THE

03:19:26   21   PATENT?

03:19:29   22   A.   YOU KNOW, TO THE EXTENT THAT THEY'RE PRACTICING THE

03:19:33   23   PATENT, WHICH I BELIEVE THAT THEY ARE, THEN THEY KNEW, THEY

03:19:35   24   WERE ON NOTICE AS OF THE TIME THAT THE COMPLAINT WAS FILED.

03:19:40   25   Q.   I'M SORRY, DR. JEFFAY. THE ONLY EVIDENCE THAT YOU JUST

03:19:42 1   SAID YOU HAD WAS THE COMPLAINT, CORRECT?

03:19:44 2   A.   THAT'S ABSOLUTELY CORRECT.

03:19:45 3   Q.   AND THE COMPLAINT DOES NOT PROVE THAT A PARTY IS EVEN

03:19:48 4   PRACTICING THE PATENT; RIGHT?

03:19:51 5   A.   THE COMPLAINT BY ITSELF, THAT'S ABSOLUTELY CORRECT.

03:19:54 6   Q.   AND IT DOES NOT PROVE THAT THEY BELIEVED THAT THEY WERE

03:19:58 7   PRACTICING THE PATENT; CORRECT?

03:19:59 8   A.   THAT'S CORRECT.

03:19:59 9   Q.   LET'S MOVE ON TO THE DESIGN AROUND THAT YOU OPINED ON.

03:20:03 10   THIS IS THE DESIGN AROUND, I BELIEVE WHERE IN THE ACCUSED

03:20:07 11   MANAGEMENT PROGRAMS ARE MODIFIED TO ACCEPT THE GENERIC COMMANDS

03:20:13 12   THAT ARE ACCUSED OF INFRINGEMENT; RIGHT?

03:20:14 13   A.   YES.

03:20:15 14   Q.   OKAY. AND THAT'S THE DESIGN AROUND THAT YOU SAID WOULD

03:20:18 15   TAKE 20 ARISTA SOFTWARE ENGINEERS WORKING FULL TIME 6 MONTHS TO

03:20:23 16   COMPLETE?

03:20:24 17   A.   I THINK I SAID 6 TO 12, BUT YES.

03:20:27 18   Q.   I'M SORRY, 6 TO 12 MONTHS.

03:20:30 19   BUT YOU DON'T ACTUALLY HAVE ANY INFORMATION ABOUT HOW LONG

03:20:32 20   IT HAS TAKEN ARISTA TO IMPLEMENT COMMANDS WHEN THEY ADDED

03:20:36 21   COMMANDS TO THEIR CLI; RIGHT?

03:20:38 22   A.   THAT'S CORRECT.

03:20:39 23   Q.   OKAY. AND ACTUALLY YOUR MOST RECENT INDUSTRY EXPERIENCE

03:20:46 24   WAS IN 2001; RIGHT?

03:20:48 25   A.   SO THAT SOUNDS LIKE A QUESTION YOU ASKED AT MY DEPOSITION.

03:20:52 1   I DON'T RECALL WHAT WE ARE USING FOR EXPERIENCE, BUT CERTAINLY

03:20:55 2   I WAS WORKING WITH FOLKS IN THE INDUSTRY IN 2001.

03:20:59 3   Q.   YOU DON'T HAVE ANY INDUSTRY EXPERIENCE ON YOUR CV THAT

03:21:03 4   POST DATES 2001, DO YOU?

03:21:04 5   A.   I DON'T RECALL.

03:21:05 6   Q.   YOU DON'T RECALL?

03:21:07 7   A.   I MEAN, I DO A LOT OF WORK JOINTLY WITH THE INDUSTRY. THE

03:21:10 8   INDUSTRY SUPPORTS A LOT OF MY RESEARCH.

03:21:13 9   Q.   OKAY. WHY DON'T WE LOOK AT YOUR CV WHICH I BELIEVE SHOULD

03:21:17 10   BE IN YOUR BINDER.

03:21:18 11   A.   OKAY.

03:21:19 12   Q.   DO YOU SEE -- I WILL TRY TO FIND -- IT'S THE EXHIBIT

03:21:25 13   NUMBER 597.

03:21:25 14   A.   OKAY. YOU SAID THAT A LITTLE QUICK.

03:21:27 15   Q.   SORRY, 597.

03:21:29 16   A.   GOT IT.

03:21:42 17   Q.   AND MAYBE YOU CAN HELP ME FIND YOUR INDUSTRY EXPERIENCE ON

03:21:47 18   YOUR CV.

03:21:47 19   A.   GOT IT. PAGE 4.

03:21:48 20   Q.   PAGE 4. SO THE MOST RECENT INDUSTRY EXPERIENCE THAT YOU

03:21:51 21   HAVE ON YOUR CV IS FROM 2001; RIGHT?

03:21:54 22   A.   CORRECT. AND TO EXPLAIN WHAT -- HOW I DIFFERENTIATE

03:21:58 23   INDUSTRY EXPERIENCE FROM OTHER THINGS, THIS IS FOR -- THIS IS

03:22:01 24   FROM INSTANCES WHERE I'M ACTUALLY PAID BY SOMEONE IN THE

03:22:05 25   INDUSTRY, I'M ACTUALLY WORKING FOR THEM.

03:22:08 1   IN ADDITION TO THIS, I HAVE GREAT EXPERIENCE WORKING WITH

03:22:11 2   FOLKS IN THE INDUSTRY IN A RESEARCH CAPACITY WHERE I'M NOT

03:22:14 3   PAID, WE ARE JUST WORKING AS COLLABORATORS ON A RESEARCH

03:22:18 4   PROJECT. BUT -- SO FOR PAID INDUSTRY EXPERIENCE, YES, THE LAST

03:22:23 5   TIME WAS 2001.

03:22:24 6   Q.   OKAY. AND LET'S PUT UP SLIDE 2 FROM DR. JEFFAY'S DECK.

03:22:30 7   ACTUALLY, HERE ON -- AND MAYBE IT'S THE -- YEAH, HERE, THE

03:22:36 8   PREVIOUS APPOINTMENT SECTION, THAT'S THE PART THAT YOU

03:22:38 9   TESTIFIED EARLIER WAS YOUR INDUSTRY, RELEVANT INDUSTRY

03:22:42 10 EXPERIENCE; RIGHT?

03:22:42 11 A.   CORRECT.

03:22:43 12 Q.   AND THERE THE MOST RECENT ENTRY IS FROM 1993 TO 1994 IS

03:22:49 13 THAT RIGHT?

03:22:49 14 A.   THAT'S CORRECT.

03:22:50 15 Q.   OKAY. FINAL SET OF QUESTIONS ON IOS XR.

03:22:54 16 A.   OKAY.

03:22:54 17 Q.   THIS IS THE PRODUCT, THE CISCO PRODUCT THAT YOU SAY

03:22:59 18 PRACTICES THE '526 PATENT; RIGHT?

03:23:01 19 A.   YES.

03:23:01 20 Q.   OKAY. NOW, FOR THAT OPINION YOU MAINLY JUST RELIED ON THE

03:23:05 21 ANALYSIS THAT SOMEONE ELSE AT CISCO GAVE TO YOU; RIGHT?

03:23:09 22 A.   NO.

03:23:09 23 Q.   OKAY. YOUR ENTIRE ANALYSIS IN YOUR EXPERT REPORT ON THE

03:23:13 24 QUESTION OF WHETHER OR NOT IOS XR PRACTICES THE '526 PATENT IS

03:23:17 25 IN EXHIBIT 5 TO YOUR EXPERT REPORT; RIGHT?

03:23:21 1   A.   THAT'S CORRECT.

03:23:22 2   Q.   AND THAT'S JUST A FOUR-PAGE CHART, RIGHT?

03:23:24 3   A.   THAT'S -- YES. A CLAIM CHART.

03:23:26 4   Q.   AND YOU ADDED 11 SENTENCES TO THAT FOUR-PAGE CHART FROM

03:23:30 5   THE ORIGINAL CHART THAT CISCO GAVE TO YOU; RIGHT?

03:23:32 6   A.   I DIDN'T COUNT, BUT I WILL TRUST THAT YOU DID.

03:23:35 7   Q.   OKAY. AND JUST TO BE CLEAR, THE CHART THAT YOU WERE

03:23:43 8   WORKING OFF OF THAT CAME FROM CISCO THAT'S THE ORIGINAL

03:23:46 9   DOCUMENT, THAT WAS ONE THAT YOU DID NO WORK ON; RIGHT?

03:23:48 10   A.   I'M SORRY, THE INITIAL CONSTRUCTION, THE CHART?

03:23:51 11   Q.   YES.

03:23:52 12   A.   NO. WHAT I DID WAS I LOOKED AT THE SOURCE CODE TO VERIFY

03:23:55 13   THE CORRECTNESS OF WHAT WAS ON THE CHART.

03:23:56 14   Q.   OKAY. NOW, YOU DID NOT INCLUDE IN YOUR EXPERT REPORT A

03:23:59 15   SINGLE EXAMPLE OF A GENERIC COMMAND IN IOS XR; RIGHT?

03:24:03 16   A.   THAT'S CORRECT.

03:24:04 17   Q.   YOU INCLUDED 77 EXAMPLES OF ARISTA'S GENERIC COMMANDS;

03:24:10 18   RIGHT?

03:24:10 19   A.   YES.

03:24:10 20   Q.   BUT ZERO OF THE GENERIC COMMANDS IN IOS XR; RIGHT?

03:24:15 21   A.   THAT'S RIGHT.

03:24:15 22   Q.   AND AT YOUR DEPOSITION, YOU COULDN'T REMEMBER A SINGLE

03:24:19 23   GENERIC COMMAND FROM IOS XR; RIGHT?

03:24:21 24   A.   THAT'S LITERALLY TRUE, AND THE PROBLEM WAS THAT I THINK

03:24:26 25   WHAT I SAID IN THE DEPOSITION WAS THERE'S GROSS SIMILARITY

03:24:30 1   BETWEEN THE GENERIC COMMANDS IN EOS AND IOS, AND I DIDN'T WANT

03:24:34 2   TO CONFUSE THE TWO AND GIVE WHAT I THOUGHT WAS AN IOS COMMAND

03:24:38 3   ONLY TO FIND OUT IT WAS AN EOS COMMAND.

03:24:40 4   SO OFF THE TOP OF MY HEAD, I WAS CONCERNED ABOUT CONFUSING

03:24:43 5   THE TWO.

03:24:43 6   Q.   OKAY. AND YOU HAD YOUR EXPERT REPORT TO CONSULT YOU AT

03:24:47 7   THE DEPOSITION WHEN YOU GAVE THAT TESTIMONY; RIGHT?

03:24:49 8   A.   YES, I DID.

03:24:50 9   Q.   OKAY. YOU ALSO DIDN'T IDENTIFY THE PRESCRIBED COMMANDS IN

03:24:53 10   IOS XR THAT GO ALONG WITH THE GENERIC COMMANDS; RIGHT?

03:24:56 11   A.   THAT'S CORRECT.

03:24:56 12   Q.   AND BECAUSE YOU DIDN'T IDENTIFY THE GENERIC COMMANDS, YOU

03:24:59 13   DIDN'T IDENTIFY ANY GENERIC COMMAND COMPONENTS; RIGHT?

03:25:02 14   A.   CORRECT. I WAS FOCUSED ON DEMONSTRATING THE METHOD WAS

03:25:06 15   PERFORMED.

03:25:06 16   Q.   AND YOU DIDN'T LIST ANY MANAGEMENT PROGRAMS FROM IOS XR IN

03:25:10 17   YOUR REPORT; RIGHT?

03:25:11 18   A.   CORRECT.

03:25:12 19   Q.   YOU ALSO COULDN'T DRAW THE PARSE TREE FOR IOS XR AT YOUR

03:25:16 20   DEPOSITION; RIGHT?

03:25:17 21   A.   I KNOW WE DIDN'T DRAW IT. I DON'T RECALL WHY.

03:25:20 22   Q.   OKAY. WELL, WHY DON'T WE -- WHY DON'T I DIRECT YOUR

03:25:31 23   ATTENTION TO PAGES 168, LINES 21 TO 169, LINE 2 OF YOUR

03:25:37 24   DEPOSITION.

03:25:38 25   A.   I'M SORRY --

03:25:39 1   Q.   PAGE 168 TO 169.

03:25:54 2   A.   RIGHT. SO YOU ASKED ME IF I COULD DRAW IT AND WHAT I SAID

03:25:59 3   IS I HAVEN'T REVIEWED IOS XR IN PREPARATION FOR THIS

03:26:02 4   DEPOSITION, SO WITHOUT HAVING REVIEWED IT, I DON'T THINK I CAN

03:26:05 5   DRAW -- I WOULD BE CONCERNED ABOUT MY ABILITY TO ACCURATELY

03:26:09 6   REPRESENT IT.

03:26:10 7   Q.   AND AS A RESULT YOU DIDN'T DRAW THE PARSE TREE; RIGHT?

03:26:12 8   A.   THAT'S CORRECT.

03:26:13 9   MR. KRISHNAN: NO FURTHER QUESTIONS, YOUR HONOR.

03:26:15 10   THE COURT: THANK YOU.

03:26:16 11   MR. PAK, REDIRECT FOR THIS WITNESS?

03:26:18 12   MR. PAK: JUST A FEW QUESTIONS, YOUR HONOR.

03:26:20 13   THE COURT: OKAY.

03:26:21 14   **REDIRECT EXAMINATION**

03:26:22 15   BY MR. PAK:

03:26:36 16   Q.   GOOD AFTERNOON.

03:26:36 17   A.   GOOD AFTERNOON.

03:26:37 18   Q.   FIRST OF ALL, IS THERE ANY DISPUTE BETWEEN ARISTA AND

03:26:41 19   CISCO ON WHETHER CISCO'S IOS XR PRACTICES CLAIM 1 OF THE '526

03:26:46 20   PATENT?

03:26:46 21   A.   AS WE SAID PREVIOUSLY, MY UNDERSTANDING IS THERE'S NO

03:26:50 22   DISPUTE.

03:26:50 23   Q.   OKAY. AND TO SHOW INFRINGEMENT OF A CLAIM, A METHOD CLAIM

03:26:57 24   LIKE THE ONE THAT WE ARE SEEING IN CLAIM 1 OF THE '526 PATENT,

03:27:01 25   IS IT REQUIRED TO SHOW MORE THAN ONE INSTANCE OF INFRINGEMENT?

03:27:06   1   A.   NO.

03:27:06   2   Q.   SO IF YOU PRACTICE THE CLAIM ONCE, THAT'S SUFFICIENT TO

03:27:09   3   SHOW INFRINGEMENT; IS THAT CORRECT?

03:27:10   4   A.   YES, ANY PRACTICING OF THE METHOD CONSTITUTES INFRINGEMENT

03:27:16   5   FROM MY UNDERSTANDING.

03:27:17   6   Q.   JUST TO BE CLEAR, CAN YOU EXPLAIN WHY YOU WERE LISTING 77

03:27:20   7   EXAMPLES WHEN ONLY 1 EXAMPLE WOULD HAVE BEEN SUFFICIENT?

03:27:23   8   A.   WELL, AS I SAY, THE EXAMPLES HAD BEEN GENERATED

03:27:27   9   PREVIOUSLY, SO I INCLUDED THEM IN MY REPORT BECAUSE I THINK

03:27:30 10   THEY ARE INTERESTING EXAMPLES TO LOOK AT. BUT AT THE END OF

03:27:34 11   THE DAY, YOU DON'T PROVE INFRINGEMENT BY EXAMPLE.

03:27:38 12   Q.   OKAY. AND TO BE CLEAR, DID YOU HAVE ACCESS TO THE ARISTA

03:27:42 13   SOURCE CODE?

03:27:43 14   A.   YES.

03:27:43 15   Q.   DID YOU ANALYZE THAT SOURCE CODE WITH RESPECT TO ALL THE

03:27:46 16   ELEMENTS THAT WE WALKED THROUGH?

03:27:47 17   A.   YES.

03:27:48 18   Q.   AND WERE YOU ABLE TO PERFORM YOUR INDEPENDENT ANALYSIS OF

03:27:52 19   EVERY ONE OF THOSE ELEMENTS?

03:27:53 20   A.   YES, AND I BELIEVE I SHOWED THE EVIDENCE THAT I WAS

03:27:56 21   RELYING ON.

03:27:57 22   Q.   AND WERE YOU ABLE TO FORM YOUR INDEPENDENT PROFESSIONAL

03:28:00 23   OPINION ON WHETHER EACH OF THOSE ELEMENTS ARE SATISFIED IN THE

03:28:04 24   ACCUSED PRODUCTS?

03:28:05 25   A.   YES.

03:28:06   1   Q.   AND WHAT'S YOUR CONCLUSION?

03:28:07   2   A.   AND MY OPINION WAS THAT THEY WERE ALL PRESENT.

03:28:10   3   Q.   OKAY.   AND, YOU KNOW, WE HAVE BEEN USING THE WORD "GENERIC

03:28:13   4   COMMAND" TO DESCRIBE SOME OF THE COMMANDS THAT ARE EXAMPLES IN

03:28:16   5   YOUR PRESENTATION, CORRECT?

03:28:17   6   A.   YES.

03:28:18   7   Q.   BUT JUST TO BE CLEAR, THE REASON WHY YOU'VE BEEN USING THE

03:28:21   8   WORD "GENERIC COMMAND" IS THAT'S A TERM THAT APPEARS IN THE

03:28:23   9   PATENT; CORRECT?

03:28:24   10   A.   YES, IT'S IN THE CLAIMS, IN FACT.

03:28:26   11   Q.   RIGHT.   AND HER HONOR ACTUALLY CONSTRUED AND GAVE YOU A

03:28:31   12   DEFINITION AND SAID YOU NEED TO APPLY THIS DEFINITION OF THAT

03:28:33   13   WORD; CORRECT?

03:28:34   14   A.   YES.

03:28:34   15   Q.   SO REALLY WHAT YOU WERE DOING WAS YOU WERE REAPPLYING HER

03:28:38   16   HONOR'S CONSTRUCTION TO SEE WHETHER THAT DESCRIPTION WOULD BE

03:28:41   17   SATISFIED AT LEAST ONCE IN THE ACCUSED PRODUCTS; IS THAT

03:28:43   18   CORRECT?

03:28:43   19   A.   YES.

03:28:44   20   Q.   AND JUST TO BE CLEAR FOR THE JURY, YOU ARE NOT OPINING

03:28:51   21   HERE TODAY ON THE ORIGIN OF THOSE COMMANDS IN ARISTA'S EOS,

03:28:54   22   WHETHER THEY CAME FROM ARISTA OR SOME OTHER SOURCE; CORRECT?

03:28:57   23   A.   NO.

03:28:57   24   Q.   AND THERE WAS A LOT OF QUESTIONS ABOUT CERTAIN FIGURES AND

03:29:03   25   EXAMPLES FROM THE PATENT?

03:29:04   1   A.   YES.

03:29:05   2   Q.   AND FROM ARISTA'S COUNSEL. AND WHEN YOU DO INFRINGEMENT

03:29:09   3   ANALYSIS, ARE YOU COMPARING THE EXAMPLES FROM PATENTS TO THE

03:29:13   4   ACCUSED PRODUCT OR ARE YOU COMPARING CLAIMS OF PATENTS TO THE

03:29:18   5   ACCUSED PRODUCT?

03:29:19   6   A.   NO. IT'S ALL ABOUT THE CLAIMS. THE FIGURES ARE

03:29:23   7   ILLUSTRATIVE, THE EXAMPLES ARE ILLUSTRATIVE, BUT THAT'S NOT

03:29:26   8   WHAT DEFINES WHAT THE INVENTION IS.

03:29:28   9   Q.   IN FACT, BASED ON YOUR UNDERSTANDING OF THE PATENT LAW

03:29:31   10   THAT YOU HAD TO APPLY, WOULD IT BE PROPER TO DO AN EXAMPLE TO

03:29:35   11   AN ACCUSED PRODUCT COMPARISON FOR PURPOSES OF INFRINGEMENT?

03:29:38   12   A.   WELL, AS I HAVE BEEN INSTRUCTED, THAT'S NOT PROPER AT ALL.

03:29:41   13   IT'S IMPROPER.

03:29:43   14   Q.   OKAY. AND JUST GOING BACK TO THE TESTIMONY EARLIER WHERE

03:29:47   15   WE SAW MR. SWEENEY DRAWING THOSE PICTURES AND THEN YOU HAVE

03:29:52   16   PARSE TREE PICTURES OF YOUR OWN, THERE WERE SOME QUESTIONS

03:29:55   17   ABOUT THAT.

03:29:56   18   CAN YOU EXPLAIN TO THE JURY WHAT WAS THE PURPOSE IN YOUR

03:29:59   19   SHOWING THE JURY THOSE FIGURES THAT MR. SWEENEY DREW AS A

03:30:03   20   CORPORATE REPRESENTATIVE AND YOUR RENDERING OF THOSE EXAMPLES,

03:30:06   21   WHAT WAS THE PURPOSE OF THAT?

03:30:08   22   A.   SO THE PURPOSE WAS TO SHOW THAT ARISTA ADMITS THAT THEY

03:30:11   23   HAVE A HIERARCHICAL DATA STRUCTURE IN THEIR PARSES WHICH IS THE

03:30:19   24   COURT'S CONSTRUCTION.

03:30:19   25   Q.   AND IS THAT HELPFUL TO THE JURY TO UNDERSTAND WHETHER A

03:30:23   1   HIERARCHICAL DATA STRUCTURE IS PRESENT?

03:30:26   2   A.   YES, IT'S VERY IMPORTANT BECAUSE IT'S A REQUIRED ELEMENT.

03:30:29   3   Q.   AND THINKING ABOUT HIS TESTIMONY IN PARTICULAR OF AGENT

03:30:34   4   BEING A PROCESS, DO YOU RECALL THAT TESTIMONY THAT YOU RELIED

03:30:36   5   ON?

03:30:36   6   A.   YES.

03:30:36   7   Q.   WHAT IS THE SIGNIFICANCE OF THAT TESTIMONY IN TERMS OF

03:30:40   8   YOUR INFRINGEMENT ANALYSIS?

03:30:41   9   A.   WELL, IT SAYS THAT ANY PROCESS, IF A PROCESS EXECUTES A

03:30:49 10   PRESCRIBED COMMAND, THAT WOULD SATISFY THE COURT'S DEFINITION

03:30:52 11   OF A MANAGEMENT PROGRAM.

03:30:54 12   Q.   AND DO YOU HAVE ANY DISAGREEMENT OR DOUBT IN YOUR MIND

03:31:00 13   THAT EACH OF THE PRESCRIBED COMMAND EXAMPLES YOU GAVE ARE

03:31:04 14   EXECUTED IN PROCESSES OUTSIDE OF SYSDB?

03:31:09 15   A.   THERE ARE SOME THAT I BELIEVE ARE EXECUTED OUTSIDE OF

03:31:11 16   SYSDB, BUT THEY ARE PROCESSES AND THEREFORE AGENTS.

03:31:17 17   Q.   SO IF A PRESCRIBED COMMAND, LET ME ASK YOU THIS QUESTION,

03:31:24 18   DR. JEFFAY, IF A PRESCRIBED COMMAND IS EXECUTED INSIDE OF A

03:31:28 19   PROCESS, HOW DOES THAT INFORM YOUR OPINION ON INFRINGEMENT?

03:31:31 20   A.   I BELIEVE THAT SATISFIES THE COURT'S CONSTRUCTION FOR

03:31:35 21   MANAGEMENT PROGRAM BECAUSE, AS MR. SWEENEY HAS SAID --

03:31:40 22   MR. KRISHNAN: OBJECTION, YOUR HONOR. MOVE TO

03:31:41 23   STRIKE. THIS WAS THE SUBJECT OF THE MOTION THIS MORNING.

03:31:43 24   THE COURT: SUSTAINED.

03:31:44 25   BY MR. PAK:

03:31:44   1   Q.   OKAY. LET ME ASK IT THIS WAY, YOUR HONOR.

03:31:46   2   WITH RESPECT TO THE AGENT AND PROCESS DEFINITION THAT

03:31:50   3   MR. SWEENEY GAVE, HOW IS THAT RELEVANT TO YOUR UNDERSTANDING OF

03:31:54   4   WHETHER MANAGEMENT PROGRAMS, GENERALLY, ARE PRESENT INSIDE THE

03:31:58   5   ACCUSED PRODUCTS?

03:31:59   6   A.   MANAGEMENT PROGRAMS ARE TOOLS OR AGENTS, AND MR. SWEENEY'S

03:32:05   7   TESTIMONY HELPS UNDERSTAND WHAT THE SCOPE OF AGENTS ARE IN EOS.

03:32:08   8   Q.   OKAY. AND THEN FINALLY I THINK THERE WERE SOME QUESTIONS

03:32:12   9   ABOUT DEMONSTRATIVES OF ERROR MESSAGES THAT WERE SHOWING UP ON

03:32:15 10   THE SCREEN WHEN YOU TYPED INCOMPLETE COMMANDS OR INVALID

03:32:18 11   COMMANDS INSIDE OF EOS.

03:32:19 12   DO YOU RECALL THAT?

03:32:20 13   A.   YES.

03:32:20 14   Q.   AND I THINK YOU MADE THE COMMENT TO YOU THAT IT DIDN'T

03:32:25 15   SEEM VERY INTERESTING TO YOU.

03:32:28 16   DO YOU RECALL THAT?

03:32:28 17   A.   CORRECT.

03:32:29 18   Q.   CAN YOU EXPLAIN TO THE JURY WHY THEY ARE NOT VERY

03:32:31 19   INTERESTING TO YOU FROM THE PERSPECTIVE OF INFRINGEMENT?

03:32:34 20   A.   IT'S NOT A REQUIREMENT OF THE CLAIMS. WHAT I DID WAS

03:32:37 21   ANALYZE THE CLAIMS AND I SHOWED THAT FOR VALIDATING STEP FOR

03:32:41 22   THE BEST MATCH STEP HOW THOSE ARE MET, HOW THOSE ARE MET. THE

03:32:47 23   FACT THAT HE'S RELYING ON A SPECIFIC EXAMPLE FROM THE

03:32:53 24   DESCRIPTION IN THE PATENT THAT I BELIEVE IS CONSISTENT WITH

03:32:56 25   WHAT HE SHOWED, DOESN'T REALLY INFORM MY OPINION.

03:33:01 1   MR. PAK: YOUR HONOR, I DON'T HAVE ANY MORE

03:33:02 2   QUESTIONS.

03:33:02 3   THE COURT: ALL RIGHT. ANYTHING ELSE, MR. KRISHNAN?

03:33:04 4   MR. KRISHNAN: NO, YOUR HONOR.

03:33:05 5   THE COURT: AND MAY DR. JEFFAY BE EXCUSED?

03:33:07 6   MR. KRISHNAN: YES.

03:33:08 7   THE COURT: DR. JEFFAY, THANK YOU FOR YOUR TESTIMONY.

03:33:10 8   YOU ARE FREE TO GO.

03:33:12 9   THE WITNESS: THANK YOU VERY MUCH.

03:33:14 10   MR. PAK: YOUR HONOR, I THINK WE ARE GOING TO CALL

03:33:16 11   MR. REMAKER BACK TO THE STAND.

03:33:18 12   THE COURT: OKAY.

03:33:33 13   MR. REMAKER, YOU KNOW THE DRILL, IF YOU WOULD COME UP TO

03:33:36 14   THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

03:33:36 15   THE WITNESS: DID I DO SOMETHING WRONG?

03:33:36 16   THE COURT: NO. YOU ARE JUST FAMILIAR.

03:33:50 17   (**PLAINTIFF'S WITNESS, PHILLIP REMAKER, WAS SWORN.**)

03:33:50 18   THE WITNESS: YES.

03:34:04 19   THE COURT: GO AHEAD, MR. NELSON.

03:34:05 20   MR. NELSON: MAY I APPROACH, YOUR HONOR? I HAVE TO

03:34:07 21   GIVE HIM A COPY OF THE EXHIBIT.

03:34:09 22   THE COURT: YES.

03:34:45 23   **FURTHER REDIRECT EXAMINATION**

03:34:45 24   BY MR. NELSON:

03:34:46 25   Q.   CAN YOU TELL ME WHAT YOU HAVE IN FRONT OF YOU HAD OF HAD

03:34:48 1   -- WELL, ACTUALLY FIRST CAN YOU INTRODUCE YOURSELF AGAIN?

03:34:50 2   A.   MY NAME IS PHIL REMAKER.

03:34:52 3   Q.   WELL, WE'VE HEARD -- WE TALKED TO YOU EARLIER ARE IN THE

03:34:56 4   WEEK SO I WON'T GO BACK THROUGH ALL YOUR BACKGROUND. I JUST

03:34:59 5   WANT YOU TO LOOK HERE AT 4789 THAT YOU HAVE IN FRONT OF YOU.

03:35:04 6   A.   YES.

03:35:04 7   Q.   AND --

03:35:06 8   MR. FERRALL: I'M SORRY. LET'S JUST MAKE SURE,

03:35:09 9   BEFORE WE START --

03:35:10 10   MR. NELSON: HERE, YOU CAN HAVE MY COPY.

03:35:12 11   MR. PAK: WE E-MAILED IT THIS MORNING.

03:35:15 12   MR. FERRALL: I WAS IN COURT. THANK YOU.

03:35:18 13   BY MR. NELSON:

03:35:19 14   Q.   AND CAN YOU TELL ME WHAT 4789 IS?

03:35:21 15   A.   4789 IS A DOCUMENT THAT WE PREPARED AT THE REQUEST OF OUR

03:35:27 16   LEGAL TEAM, I BELIEVE, THROUGH THE REQUEST OF ARISTA

03:35:30 17   IDENTIFYING ALL OF THE COMMANDS IN QUESTION AND THE EARLIEST

03:35:35 18   KNOWN DOCUMENT WHERE THEY APPEARED, AND THE ORIGINATING PARTY

03:35:39 19   FOR EACH, ALTHOUGH THE ORIGINATING PARTY IS NOT INCLUDED IN

03:35:42 20   THIS DOCUMENT.

03:35:43 21   Q.   AND -- DID YOU HAVE A TEAM OF PEOPLE DOING THAT?

03:35:48 22   A.   I WAS ASKED TO ASSEMBLE A TEAM OF PEOPLE TO DO THE

03:35:52 23   RESEARCH FOR THIS WORK.

03:35:54 24   Q.   AND ABOUT HOW LONG DID THAT TAKE?

03:35:58 25   A.   WE HAD A TEAM OF SIX TO EIGHT VERY SENIOR ENGINEERS

03:36:03 1   DIGGING IN SOME OF OUR OLDEST SYSTEMS, PROBABLY DOZENS IF NOT

03:36:08 2   HUNDREDS OF HOURS TO UNEARTH ALL THIS INFORMATION.

03:36:12 3   Q.   AND 4789, DOES THAT REFLECT THE INFORMATION THAT YOU

03:36:20 4   UNEARTHED FROM THAT?

03:36:21 5   A.   YES.

03:36:23 6   MR. NELSON: AT THIS POINT I WOULD MOVE 4789 INTO

03:36:27 7   EVIDENCE YOUR HONOR.

03:36:27 8   THE COURT: ANY OBJECTION?

03:36:28 9   MR. FERRALL: NO OBJECTION.

03:36:29 10   THE COURT: IT WILL BE ADMITTED.

03:36:30 11   (PLAINTIFF'S EXHIBIT 4789 WAS ADMITTED INTO EVIDENCE.)

03:36:30 12   BY MR. NELSON:

03:36:30 13   Q.   NOW, CAN WE PUT THAT UP ON THE SCREEN JUST SO THAT WE

03:36:36 14   CAN -- SO YOU SEE THAT FIRST COLUMN WHERE IT SAYS CISCO COMMAND

03:36:40 15   EXPRESSION?

03:36:40 16   A.   YES.

03:36:40 17   Q.   AND CAN YOU JUST TELL US WHAT THAT IS?

03:36:42 18   A.   THAT IS A SPECIFIC COMMAND EXPRESSION FOR THE CISCO

03:36:48 19   COMMAND-LINE INTERFACE.

03:36:50 20   Q.   AND THEN THE NEXT COLUMN WHERE IT SAYS EARLIEST KNOWN

03:36:53 21   DOCUMENT, CAN YOU TELL US WHAT THAT IS?

03:36:55 22   A.   THE NEXT COLUMN IS THE EARLIEST DOCUMENT THAT WE FOUND

03:36:59 23   WITH EVIDENCE OF THAT COMMAND.

03:37:02 24   Q.   AND THEN THE NEXT COLUMN, IT SAYS DATE OF EARLIEST KNOWN

03:37:07 25   DOCUMENT, WHAT DOES THAT REPRESENT?

03:37:09 1   A.   THAT WAS THE DATE OF THE DOCUMENT IN THE PREVIOUS COLUMN,

03:37:13 2   THE ORIGINATION DATE OF THE DOCUMENT IN THE PREVIOUS COLUMN.

03:37:15 3   Q.   AND THEN THE, I GUESS IT'S THE FOURTH ONE, IT SAYS FIRST

03:37:21 4   OPERATING SYSTEM. CAN YOU TELL US WHAT THAT IS?

03:37:22 5   A.   THE FIRST OPERATING SYSTEM IS THE FIRST VERSION OF THE

03:37:25 6   CISCO OPERATING SYSTEM WHERE THAT COMMAND APPEARED.

03:37:27 7   Q.   AND THEN FINALLY THE LAST COLUMN WHERE IT SAYS FIRST

03:37:31 8   DISTRIBUTION DATE, CAN YOU TELL US WHAT THAT IS?

03:37:33 9   A.   THAT WOULD BE THE FIRST DATE THAT THE OPERATING SYSTEM WAS

03:37:35 10   RELEASED FOR CONSUMPTION BY CISCO CUSTOMERS.

03:37:39 11   Q.   AND IN TERMS OF THE COMMAND EXPRESSIONS THAT ARE CONTAINED

03:37:43 12   HERE, ARE THOSE -- IS IT YOUR UNDERSTANDING THAT THOSE ARE THE

03:37:46 13   COMMANDS THAT ARE AT ISSUE IN THE CASE?

03:37:48 14   A.   THAT IS MY UNDERSTANDING.

03:37:49 15   Q.   OKAY.

03:37:50 16   MR. NELSON: THANK YOU, YOUR HONOR. I DON'T HAVE ANY

03:37:52 17   FURTHER QUESTIONS.

03:37:53 18   THE COURT: ANY QUESTIONS FOR MR. REMAKER?

03:37:55 19   MR. FERRALL: A FEW, YOUR HONOR. THANK YOU.

03:38:03 20   **FURTHER RECROSS-EXAMINATION**

03:38:03 21   BY MR. FERRALL:

03:38:04 22   Q.   GOOD AFTERNOON, MR. REMAKER.

03:38:06 23   A.   GOOD AFTERNOON.

03:38:07 24   Q.   JUST TO CLARIFY, THIS CHART IS NOT A REFLECTION OF ANY

03:38:11 25   PERSONAL KNOWLEDGE ABOUT HOW EACH OF THESE COMMANDS CAME ABOUT;

03:38:15 1   CORRECT?

03:38:17 2   A.   PERSONAL KNOWLEDGE OF WHOM?

03:38:19 3   Q.   IT'S NOT YOUR PERSONAL KNOWLEDGE ABOUT THE THOUGHT PROCESS

03:38:25 4   THAT ANY GIVEN ENGINEER WENT THROUGH TO COME UP WITH THESE

03:38:28 5   COMMANDS; CORRECT?

03:38:29 6   A.   THAT'S CORRECT.

03:38:30 7   Q.   YOU DIDN'T SPEAK TO ALL OF THE ENGINEERS WHO CAME UP WITH

03:38:39 8   THESE COMMANDS IN ORDER TO COMPOSE THIS CHART; RIGHT?

03:38:43 9   A.   I DID NOT SPEAK TO EACH INDIVIDUAL ENGINEER FOR EACH

03:38:46 10   INDIVIDUAL COMMAND, CORRECT.

03:38:47 11   Q.   AND THE RESEARCH THAT YOU DID DID NOT EVEN NECESSARILY

03:38:54 12   LEAD YOU TO THE PERSON WHO ULTIMATELY CAME UP WITH THIS

03:38:59 13   COMMAND, WITH ANY GIVEN COMMAND; RIGHT?

03:39:01 14   A.   WE ACTUALLY EACH -- COULD YOU REPEAT THAT QUESTION ONE

03:39:07 15   MORE TIME?

03:39:07 16   Q.   YEAH, SURE.

03:39:08 17   THE RESEARCH THAT YOU DID, DID NOT ACTUALLY LEAD YOU

03:39:11 18   DEFINITIVELY TO THE PERSON WHO CAME UP WITH EACH COMMAND;

03:39:16 19   RIGHT?

03:39:17 20   A.   SO, AGAIN, IT WAS NOT JUST ME, BUT A TEAM OF PEOPLE DOING

03:39:22 21   THIS. EACH DOCUMENT HAD -- EACH OF THESE DOCUMENTS HAD A

03:39:29 22   PERSON OR PERSONS ASSOCIATED WITH IT THAT ARE VERY LIKELY THE

03:39:33 23   ORIGINATORS OF THE COMMAND.

03:39:40 24   Q.   MR. REMAKER, YOU FILED A DECLARATION IN THIS CASE OVER A

03:39:46 25   YEAR AGO. DO YOU REMEMBER THAT?

03:39:49   1   A.   NOT SPECIFICALLY, BUT I PRESUME YOU ARE GOING TO SHOW IT

03:39:55   2   TO ME.

03:39:57   3   MR. FERRALL: I AM.   IF I MAY APPROACH?

03:40:00   4   THE COURT: YES.

03:40:02   5   Q.   SO I'VE HANDED YOU WHAT'S BEEN MARKED -- WE WILL JUST

03:40:16   6   IDENTIFY IT FOR THE RECORD, 5612.   MR. REMAKER, YOU SEE THIS IS

03:40:22   7   A DECLARATION THAT YOU SIGNED IN THIS CASE DATED SEPTEMBER 28,

03:40:31   8   2015?

03:40:31   9   A.   YES.

03:40:32   10 Q.   AND DOES THIS REFRESH YOUR MEMORY ABOUT SUBMITTING A

03:40:36   11 DECLARATION UNDER OATH IN THIS CASE?

03:40:38   12 A.   YES.

03:40:38   13 Q.   AND IF I COULD DIRECT YOU TO PARAGRAPH 11, YOU SAID --

03:40:45   14 A.   I'M SORRY, PARAGRAPH 11?

03:40:47   15 Q.   PARAGRAPH 11 ON PAGE 5.

03:40:49   16 A.   ALL RIGHT.

03:40:50   17 Q.   YOU SAID IN THIS DECLARATION, "AS A MATTER OF COURSE,

03:41:00   18 CISCO DOES NOT TRACK THE SOFTWARE DEVELOPER RESPONSIBLE FOR

03:41:04   19 EACH LINE OF SOURCE CODE;" RIGHT?

03:41:05   20 A.   THAT'S CORRECT.

03:41:06   21 Q.   "CISCO TEAMS WORK COLLABORATIVELY AND THE PERSON WHO

03:41:09   22 CHECKS IN OR PUTS THE CODE INTO THE SOURCE CODE REPOSITORY FOR

03:41:14   23 THE FIRST TIME MAY OR MAY NOT BE THE PERSON THAT DESIGNED THE

03:41:18   24 COMMAND EXPRESSION;" RIGHT?

03:41:18   25 A.   MAY OR MAY NOT BE DEPENDING ON THE CIRCUMSTANCES, YES.

03:41:21 1   Q.   "THEY MAY BE, AND IN MANY INSTANCES WILL LIKELY BE, THE

03:41:25 2   PERSON WHO PERFORMED THE PROGRAMMING TASK AFTER ALL CREATIVE

03:41:30 3   DESIGN DECISIONS WERE MADE."

03:41:32 4   THAT'S WHAT YOU SAID; RIGHT?

03:41:33 5   A.   YES.

03:41:33 6   Q.   OKAY. AND SO FOR THE ENTRIES IN EXHIBIT 4789 THAT REFER

03:41:45 7   TO SOURCE CODE, YOUR RESEARCH MAY HAVE JUST LEAD YOU TO THE

03:41:50 8   PERSON WHO CHECKED IN THE SOURCE CODE AT CISCO; RIGHT?

03:41:57 9   A.   FOR THIS RESEARCH, WE TOOK SPECIAL PAINS TO AVOID THAT.

03:42:01 10   WE KNEW THAT WAS A PITFALL. THIS DECLARATION PREDATES THE WORK

03:42:08 11   DONE IN PREPARING THIS DOCUMENT.

03:42:10 12   SO WE KNEW THAT WAS A RISK, AND IN PREPARING THIS

03:42:13 13   DOCUMENT, WE WORKED HARD TO AVOID THE RISK OF MISIDENTIFYING

03:42:18 14   THE DESIGNER VERSUS THE PERSON WHO CHECKED IN AND DID THE

03:42:23 15   PROGRAMMING TASK AFTER THE DECISIONS WERE MADE.

03:42:25 16   SO WE REALIZED THAT WAS A RISK, AND PART OF THE REASON WE

03:42:31 17   COULDN'T JUST GIVE YOU A COMPANY OF THE SOURCE CODE WAS -- PART

03:42:34 18   OF THE REASON THIS ISN'T JUST A LIST OF ALL THE SOURCE CODE IS

03:42:37 19   CONTROLLING FOR THAT FACTOR.

03:42:39 20   Q.   OKAY. AND IN SOME INSTANCES IN THIS EXHIBIT YOU SIMPLY

03:42:45 21   LIST THE NAME OF AN OPERATING SYSTEM, FOR EXAMPLE. LET'S LOOK

03:42:51 22   AT PAGE 7 MUCH THIS EXHIBIT, PLEASE.

03:43:02 23   SO, FOR EXAMPLE, UNDER THE COMMAND IP DOMAIN NAME, THAT'S

03:43:06 24   THE THIRD; RIGHT?

03:43:10 25   A.   RIGHT.

03:43:10 1   Q.   THRU ARE NOT REFERRING TO ANY DEFINITIVE SOURCE CODE;

03:43:16 2   RIGHT?

03:43:16 3   A.   THAT'S RIGHT.

03:43:17 4   Q.   YOU ARE JUST REFERRING GENERALLY TO AN OPERATING SYSTEM?

03:43:21 5   A.   YES.

03:43:21 6   Q.   OKAY. AND LET'S LOOK AT ANOTHER ONE DOWN ON THIS PAGE,

03:43:31 7   IP, IGMP LAST-MEMBER-QUERY-COUNT?

03:43:34 8   A.   YES.

03:43:35 9   Q.   OKAY. THERE YOU REFERENCED SOURCE CODE; CORRECT?

03:43:37 10   A.   YES.

03:43:39 11   Q.   BUT YOU DON'T KNOW WHAT PROCESS THE ENGINEER WENT THROUGH

03:43:44 12   WHO CAME UP WITH THAT COMMAND; RIGHT?

03:43:48 13   A.   I DON'T.

03:43:52 14   Q.   AND IF THE ENGINEER WHO CAME UP WITH THAT COMMAND TOOK THE

03:44:02 15   WORDS FROM AN INDUSTRY STANDARD RFC TO ARRIVE AT THIS COMMAND,

03:44:10 16   YOU DON'T HAVE ANY REASON TO DISPUTE THAT, DO YOU?

03:44:12 17   A.   I DON'T KNOW IN THE CASE OF THIS PARTICULAR COMMAND.

03:44:16 18   Q.   THANK YOU.

03:44:18 19   MR. FERRALL: NO FURTHER QUESTIONS, YOUR HONOR.

03:44:19 20   THE COURT: THANK YOU. ANY ELSE FOR MR. REMAKER?

03:44:21 21   MR. NELSON: JUST A COUPLE OF THINGS.

03:44:23 22   THE COURT: SURE.

03:44:25 23   **FURTHER REDIRECT EXAMINATION**

03:44:26 24   BY MR. NELSON:

03:44:26 25   Q.   SO IF WE CAN PUT EXHIBIT 4789 BACK UP THERE. THERE'S NO

03:44:33 1   COLUMN IN 4789 FOR A SPECIFIC AUTHOR; RIGHT?

03:44:36 2   A.   THAT'S CORRECT.

03:44:37 3   Q.   SO -- AND YOU TALKED EARLIER IN THE WEEK ABOUT THE COMMAND

03:44:42 4   AUTHORING PROCESS; RIGHT?

03:44:44 5   A.   THAT'S RIGHT.

03:44:44 6   Q.   DO YOU REMEMBER THAT?

03:44:45 7   A.   I DO.

03:44:45 8   Q.   AND WAS THAT A COLLABORATIVE EFFORT?

03:44:50 9   A.   IN MY PERSONAL CASE FOR MY COMMAND I COLLABORATED WITH A

03:44:56 10   GROUP OF PEOPLE AND ENDED UP WRITING A DOCUMENT WITH MY NAME

03:44:58 11   AND A DESIGNER'S NAME, SO IT CAN BE A COLLABORATIVE EFFORT

03:45:03 12   AMONG ENGINEERS BUT IT'S ALWAYS A CREATIVE ONE.

03:45:05 13   Q.   SO THEN IF I GO, AND JUST LOOK AT THE FIRST PAGE HERE OF

03:45:10 14   EXHIBIT 4789 WHERE IT SAYS DATE OF EARLIEST KNOWN DOCUMENT, CAN

03:45:13 15   YOU EXPLAIN TO US WHAT THAT IS?

03:45:15 16   A.   THAT IS THE DATE OF THE FIRST DOCUMENT WE COULD PRODUCE

03:45:20 17   RELATED TO THE COMMAND ON THE CORRESPONDING LINE.

03:45:24 18   Q.   OKAY. AND THEN THE FIRST OPERATING SYSTEM, REMIND US WHAT

03:45:29 19   THAT IS SHOWING?

03:45:30 20   A.   THE FIRST OPERATING SYSTEM IS THE FIRST VERSION OF THE

03:45:34 21   CISCO OPERATING SYSTEM THAT SHIPPED CONTAINING THAT COMMAND.

03:45:38 22   Q.   OKAY. THANK YOU, SIR.

03:45:39 23   MR. NELSON: I DON'T HAVE ANY FURTHER QUESTIONS.

03:45:41 24   THE COURT: MR. FERRALL, ANYTHING ELSE?

03:45:42 25   MR. FERRALL: NO, YOUR HONOR.

03:45:44 1   THE COURT: THANK YOU, MR. REMAKER. YOU MAY STEP

03:45:47 2   DOWN.

03:45:47 3   THE WITNESS: THANK YOU.

03:45:50 4   THE COURT: I WAS GOING TO TAKE ONE MORE SHORT BREAK.

03:45:53 5   SO LET'S DO IT NOW SO WE DON'T HAVE OUR WITNESS FOR FIVE

03:45:57 6   MINUTES OF TESTIMONY, IT'S ALWAYS EASIER. ALL RIGHT. WE WILL

03:46:00 7   COME BACK IN TEN MINUTES.

03:46:03 8   (RECESS FROM 3:46 P.M. UNTIL 3:56 P.M.)

03:56:53 9   THE COURT: ALL RIGHT. WE ARE BACK ON THE RECORD.

03:56:55 10   PLEASE BE SEATED, EVERYONE. ALL OF OUR JURORS ARE HERE.

03:56:59 11   ALL RIGHT. LADIES AND GENTLEMEN, WE ARE IN THE HOME

03:57:01 12   STRETCH FOR THE WEEK SO WE WILL PAY ATTENTION FOR THE LAST

03:57:04 13   HOUR.

03:57:04 14   MR. PAK, YOUR NEXT WITNESS.

03:57:07 15   MR. PAK: WE ARE GOING TO HAVE DR. JUDITH CHEVALIER

03:57:11 16   TO THE STAND.

03:57:12 17   THE COURT: DR. CHEVALIER, IF YOU WOULD COME FORWARD

03:57:16 18   TO THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

03:57:16 19   (**PLAINTIFF'S WITNESS, JUDITH CHEVALIER, WAS SWORN.**)

03:57:25 20   THE WITNESS: YES.

03:57:26 21   THE CLERK: THANK YOU.

03:57:28 22   PLEASE BE SEATED.

03:57:32 23   PLEASE STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE

03:57:35 24   RECORD.

03:57:35 25   THE WITNESS: SURE. IT'S JUDITH CHEVALIER,

03:57:39   1   C-H-E-V-A-L-I-E-R.

03:57:42   2   **DIRECT EXAMINATION**

03:57:42   3   BY MR. MR. PAK:

03:57:43   4   Q.   GOOD AFTERNOON, DOCTOR.

03:57:45   5   A.   GOOD AFTERNOON.

03:57:45   6   Q.   COULD YOU BRIEFLY DESCRIBE FOR THE JURY WHAT YOU DO FOR A

03:57:48   7   LIVING?

03:57:48   8   A.   SURE.   I'M A PROFESSOR AT THE YALE SCHOOL OF MANAGEMENT

03:57:51   9   WHICH IS THE BUSINESS SCHOOL AT YALE UNIVERSITY.

03:57:54 10   I'M A -- MY OFFICIAL TITLE IS THE WILLIAM S. BEINECKE

03:57:59 11   PROFESSOR OF FINANCE, PROFESSOR OF ECONOMICS AND FINANCE. AND

03:58:00 12   I'M ALSO A FACULTY RESEARCH ASSOCIATE AT THE NATIONAL BUREAU OF

03:58:05 13   ECONOMIC RESEARCH.

03:58:05 14   Q.   AND HAVE YOU PREPARED SOME SLIDES TO HELP US UNDERSTAND

03:58:09 15   YOUR TESTIMONY TODAY?

03:58:10 16   A.   I HAVE.

03:58:11 17   Q.   AND BRIEFLY, IF YOU COULD SUMMARIZE YOUR EDUCATIONAL

03:58:15 18   BACKGROUND FOR THE JURY?

03:58:16 19   A.   SURE.   SO MY UNDERGRADUATE DEGREE IS IN ECONOMICS FROM

03:58:20 20   YALE.   AND THEN -- AND THAT WAS FROM 1989.

03:58:25 21   AND THEN I GOT A PH.D. IN 1993 FROM M.I.T., THE

03:58:31 22   MASSACHUSETTS INSTITUTE OF TECHNOLOGY.

03:58:32 23   Q.   OKAY.   AND HAVE YOU HAD ANY APPOINTMENTS THAT ARE RELEVANT

03:58:37 24   TO THE MATTERS AT ISSUE IN THIS CASE IN TERMS OF YOUR

03:58:41 25   EXPERIENCE?

03:58:41 1   A.   YES. SO MY FIRST JOB WAS AT HARVARD UNIVERSITY AS AN

03:58:45 2   ASSISTANT PROFESSOR. I WAS THERE FROM '93 TO '94.

03:58:51 3   THEN I MOVED TO THE UNIVERSITY OF CHICAGO GRADUATE SCHOOL

03:58:55 4   OF BUSINESS WHERE I WAS EVENTUALLY A FULL PROFESSOR OF FINANCE.

03:58:59 5   I ACHIEVED THAT RANK IN 1999.

03:59:00 6   THEN I MOVED TO YALE AS A FULL PROFESSOR IN 2001.

03:59:06 7   Q.   AND HAVE YOU TAUGHT ANY CLASSES OR DONE ANY TYPE OF

03:59:08 8   RESEARCH THAT'S RELEVANT TO AN ECONOMIC ANALYSIS OF

03:59:12 9   INTELLECTUAL PROPERTY RIGHTS?

03:59:14 10   A.   YES. SO I THINK -- YOU MIGHT WANT THE NEXT SLIDE. OKAY.

03:59:23 11   SO I'VE PUBLISHED A NUMBER OF ARTICLES, MOSTLY REFEREE,

03:59:29 12   BUT SOME ALSO POPULAR IN THAT TOTAL.

03:59:32 13   AND I'VE ALSO TAUGHT, AND MY ARTICLES ARE -- MY RESEARCH

03:59:36 14   TOPIC IS IN THE AREA OF INDUSTRIAL ORGANIZATION AND IN FINANCE.

03:59:39 15   AND INDUSTRIAL ORGANIZATION IS THE STUDY OF COMPETITION AMONGST

03:59:43 16   FIRMS, AND IT'S ALSO THE AREA OF ECONOMICS THAT'S CLOSEST TO

03:59:48 17   COMPETITIVE STRATEGY.

03:59:50 18   I HAVE TAUGHT A NUMBER OF DIFFERENT COURSES AT VARIOUS

03:59:55 19   LEVELS. IN PARTICULAR, I TEACH AT YALE, OUR COURSE IN

04:00:00 20   COMPETITIVE STRATEGY IN ECONOMICS.

04:00:02 21   AND I'VE TAUGHT COURSES IN TECHNOLOGY STRATEGY WHICH IS

04:00:08 22   STRATEGY ISSUES FOR THE HIGH-TECH SECTOR.

04:00:11 23   AND I'VE ALSO TAUGHT A COURSE ON THE INFORMATION -- THE

04:00:14 24   BUSINESS AND PUBLIC POLICY AND THE INFORMATION AND COMMITTEE.

04:00:18 25   SO THAT COURSE COVERS ISSUES LIKE ECONOMY, LIKE THE PUBLIC

04:00:23 1   POLICY AND ECONOMIC ISSUES SUCH AS ANTI-TRUST AND INTELLECTUAL

04:00:28 2   PROPERTY IN THE DIGITAL ECONOMY.

04:00:30 3   Q.   AND HAVE YOU RECEIVED ANY AWARDS OR HONORS FOR YOUR WORK?

04:00:33 4   A.   YEAH. I'VE RECEIVED SOME. SO I WAS -- I RECEIVED AN

04:00:38 5   AWARD FROM THE COMMITTEE ON THE STATUS OF WOMEN IN THE ECONOMIC

04:00:42 6   PROFESSION OF THE AMERICAN ECONOMIC ASSOCIATION, THAT WAS AN

04:00:45 7   AWARD FOR MY RESEARCH. I WAS ELECTED TO THE AMERICAN ACADEMY

04:00:50 8   OF ARTS AND SCIENCES, AND I'M AN ELECTED FELLOW OF THE

04:00:55 9   ECONOMETRIC SOCIETY.

04:00:57 10   MR. PAK: YOUR HONOR, AT THIS TIME CISCO MOVES TO

04:00:58 11   QUALIFY DR. CHEVALIER AS AN ECONOMIC EXPERT WITNESS REGARDING

04:01:03 12   COPYRIGHT INFRINGEMENT DAMAGES AS WELL AS PATENT INFRINGEMENT

04:01:06 13   DAMAGES.

04:01:08 14   THE COURT: WOULD YOU LIKE TO VOIR DIRE THE WITNESS?

04:01:12 15   MR. SILBERT: NO. THANK YOU, YOUR HONOR.

04:01:13 16   THE COURT: ALL RIGHT. YOU MAY TESTIFY AS

04:01:15 17   DESIGNATED.

04:01:16 18   MR. PAK: THANK YOU, YOUR HONOR.

04:01:16 19   Q.   DR. CHEVALIER, WHAT WAS YOUR ASSIGNMENT IN THIS CASE?

04:01:18 20   A.   SO MY ASSIGNMENT IN THIS CASE WAS TO CALCULATE TWO KINDS

04:01:23 21   OF DAMAGES: THE DAMAGES SUFFERED BY CISCO FROM ARISTA'S

04:01:28 22   COPYRIGHT INFRINGEMENT; AND THEN, SECOND, UNDERTAKE AN ECONOMIC

04:01:33 23   ANALYSIS OF THE DAMAGES SUFFERED BY CISCO FROM ARISTA'S

04:01:37 24   INFRINGEMENT OF CISCO'S '526 PATENT.

04:01:40 25   Q.   AND I NOTICE THAT YOU HAD A LITTLE ASTERISK AND IT SAYS

04:01:44 1   YOU ASKED TO ASSUME INFRINGEMENT BY ARISTA. CAN YOU EXPLAIN

04:01:47 2   THAT ASSUMPTION?

04:01:48 3   A.   OH, YES. SO FOR THE PURPOSES OF MY ANALYSIS, I AM

04:01:53 4   ASSUMING THAT THE COPYRIGHTS HAVE BEEN FOUND TO BE INFRINGED

04:01:59 5   AND THAT ALSO THAT THE PATENT HAS BEEN FOUND TO BE INFRINGED.

04:02:05 6   SO MY TESTIMONY IS RELEVANT ONLY IF THE JURY FINDS EITHER

04:02:11 7   AND THAT THE COPYRIGHTS HAVE BEEN INFRINGED, CISCO'S COPYRIGHTS

04:02:17 8   HAVE BEEN INFRINGED AND/OR THAT THE PATENT HAS BEEN INFRINGED.

04:02:21 9   Q.   THANK YOU, DOCTOR.

04:02:22 10   SO IF WE LOOK AT THE NEXT SLIDE IN TERMS OF MATERIALS

04:02:25 11   CONSIDERED, CAN YOU WALK US THROUGH THE TYPE OF EVIDENCE THAT

04:02:27 12   YOU CONSIDERED IN FORMING YOUR ECONOMIC OPINIONS IN THIS CASE?

04:02:31 13   A.   SURE. SO A LOT OF THE EVIDENCE WAS, OF COURSE, MATERIALS

04:02:34 14   PRODUCED IN THIS CASE. SO I LOOKED AT THE COMPLAINT. I

04:02:40 15   EXAMINED THE DOCUMENTS PRODUCED BY BOTH PARTIES IN THE CASE. I

04:02:45 16   REVIEWED A LOT OF DEPOSITION TESTIMONY, SO THOSE ARE

04:02:50 17   DEPOSITIONS THAT WERE TAKEN PRIOR TO THE START OF TRIAL.

04:02:53 18   I EVALUATED PUBLICLY AVAILABLE INFORMATION ABOUT THE

04:02:57 19   COMPANIES AND ABOUT THE INDUSTRY; I HAD A NUMBER OF

04:03:02 20   CONVERSATIONS WITH CISCO'S TECHNICAL EXPERTS, DRS. ALMEROTH AND

04:03:09 21   JEFFAY; I HAD A NUMBER OF CONVERSATIONS WITH CISCO EMPLOYEES;

04:03:12 22   AND ALSO THE TRIAL TESTIMONY FOR THIS WEEK.

04:03:17 23   LET ME MENTION THAT I WASN'T ABLE TO BE IN COURT EVERY

04:03:21 24   MINUTE, SO, FOR EXAMPLE, I WAS TEACHING EARLIER THIS WEEK ON

04:03:25 25   THE EAST COAST. BUT I REVIEWED ALL OF THE -- I READ ALL OF THE

04:03:29 1   TRIAL TRANSCRIPTS FOR THE TRIAL THAT I MISSED.

04:03:32 2   Q.   THANK YOU, DOCTOR.

04:03:33 3   SO LET'S TAKE A LOOK AT, FIRST, THE COPYRIGHT INFRINGEMENT

04:03:37 4   DAMAGES ANALYSIS THAT YOU DID. AND SO CAN YOU EXPLAIN TO US

04:03:42 5   WHAT YOU ARE SHOWING ON SLIDE 7 AND HOW YOU FORMED YOUR

04:03:45 6   ANALYSIS OF COPYRIGHT DAMAGES.

04:03:48 7   A.   SURE. SO THERE'S AN IMPORTANT STATUTE LAW THAT GOVERNS

04:03:54 8   COPYRIGHT INFRINGEMENT DAMAGES. AND IT SAYS THAT THE COPYRIGHT

04:03:57 9   OWNER IS ENTITLED TO RECOVER THE ACTUAL DAMAGES SUFFERED BY HIM

04:04:01 10   OR HER AS A RESULT OF THE INFRINGEMENT, AND ANY PROFITS OF THE

04:04:05 11   INFRINGER THAT ARE ATTRIBUTABLE TO THE INFRINGEMENT AND ARE NOT

04:04:10 12   TAKEN INTO ACCOUNT IN COMPUTING THE ACTUAL DAMAGES.

04:04:13 13   SO MAYBE LET ME CLARIFY THAT A LITTLE BIT. THERE'S A LOT

04:04:17 14   THERE.

04:04:19 15   OKAY. SO THE COPYRIGHT OWNER, SO IN THIS CASE THAT WOULD

04:04:22 16   BE CISCO, IS ENTITLED TO RECOVER THE ACTUAL DAMAGES SUFFERED.

04:04:25 17   SO THAT WILL BE -- WE WILL CALL THAT LOST PROFITS.

04:04:33 18   SO THE LOFT PROFITS OF CISCO, AND ANY PROFITS OF THE

04:04:37 19   INFRINGER, SO THAT'S ARISTA. SO THAT'S PROFITS OF THE

04:04:40 20   INFRINGER OR PROFITS OF ARISTA THAT ARE ATTRIBUTABLE TO ITS

04:04:48 21   COPYRIGHT INFRINGEMENT AND ARE NOT TAKEN INTO ACCOUNT IN

04:04:51 22   COMPUTING THE ACTUAL DAMAGES.

04:04:52 23   SO THOSE ARE PROFITS OF ARISTA THAT ARE NOT TAKEN INTO

04:04:55 24   ACCOUNT WHEN WE DO THE COMPUTATION OF CISCO'S LOST PROFITS, AND

04:05:01 25   THESE PIECES WILL BE A LITTLE BIT CLEARER LATER, I THINK.

04:05:04   1   Q.   OKAY. BUT WE ARE LOOKING AT TWO SETS OF NUMBERS. WE ARE

04:05:07   2   LOOKING AT NUMBERS RELATED TO CISCO FOR LOST PROFITS; IS THAT

04:05:11   3   CORRECT?

04:05:11   4   A.   CORRECT.

04:05:11   5   Q.   AND THEN WE ARE LOOKING AT A DIFFERENT SET OF NUMBERS FOR

04:05:15   6   ARISTA IN TERMS OF ARISTA'S PROFITS?

04:05:18   7   A.   CORRECT.

04:05:18   8   Q.   SO WITH THAT INTRODUCTION, LET'S MOVE ON TO THIS IDEA OF

04:05:23   9   DISGORGEMENT OF, IN THIS CASE, ARISTA'S PROFITS. SO THIS IS

04:05:27 10   THE ARISTA PROFIT COLUMN.

04:05:30 11   CAN YOU HELP US UNDERSTAND YOUR UNDERSTANDING OF THE LAW

04:05:34 12   WITH RESPECT TO DISGORGEMENT OF INFRINGER'S PROFITS AND HOW

04:05:37 13   THAT RELATES TO YOUR ANALYSIS.

04:05:39 14   A.   SURE. SO WHAT YOU SEE HERE ON THE SCREEN IS JUST ANOTHER

04:05:42 15   PART OF THAT SAME LAW I MENTIONED TO YOU BEFORE. AND IT SAYS

04:05:46 16   THAT THE COPYRIGHT OWNER IS REQUIRED TO PRESENT PROOF ONLY OF

04:05:49 17   THE INFRINGER'S GROSS REVENUE, AND THE INFRINGER IS REQUIRED TO

04:05:53 18   PROVE HIS OR HER DEDUCTIBLE EXPENSES AND THE ELEMENTS OF PROFIT

04:05:57 19   ATTRIBUTABLE TO FACTORS OTHER THAN THE COPYRIGHTED WORK.

04:06:00 20   SO MAYBE I WILL SAY A LITTLE MORE ABOUT THAT. SO, AGAIN,

04:06:05 21   THAT SECOND PART WHICH IS THAT PART ABOUT ARISTA, AND THAT'S

04:06:11 22   CALLED DISGORGEMENT, RIGHT, DISGORGEMENT OF ARISTA'S PROFITS,

04:06:16 23   AND THERE'S A PIECE WHERE THE COPYRIGHT OWNER, THAT WOULD BE

04:06:21 24   CISCO, IS REQUIRED TO SHOW JUST ARISTA'S REVENUES.

04:06:24 25   AND THEN ARISTA IS REQUIRED TO SHOW EXPENSES THAT THEY

04:06:31 1   WOULD GET IN -- THAT THEY GOT IN EARNING THOSE REVENUES, AND

04:06:36 2   ALSO PARTS OF THOSE PROFITS WHICH ARE NOT COMING FROM, THAT ARE

04:06:40 3   NOT COMING FROM THE COPYRIGHTED WORK, THAT ARE DUE TO FACTORS

04:06:44 4   OTHER THAN THE COPYRIGHTED WORK.

04:06:45 5   Q.   GREAT. SO LET ME SEE IF I CAN HELP WITH YOUR TESTIMONY

04:06:51 6   HERE, DOCTOR, TO EXPLAIN THE PROCESS. SO THIS IS JUST THE

04:06:54 7   PROCESS OF HOW THE EVIDENCE WILL BE LAID OUT ON DAMAGES.

04:06:57 8   SO CAN YOU WALK US THROUGH THIS SLIDE AND JUST STEP BY

04:07:00 9   STEP EXPLAIN TO THE JURY WHAT EVIDENCE YOU ARE GOING TO HEAR,

04:07:05 10   WHAT THEY ARE GOING TO HEAR, AND HOW YOU FIT INTO THE DIFFERENT

04:07:08 11   ELEMENTS HERE.

04:07:09 12   OKAY. SO AS I JUST DESCRIBED, THERE'S -- EACH OF THE

04:07:13 13   PARTIES HAS A BURDEN HERE IN PROVING UP THIS DISGORGEMENT OF

04:07:18 14   ARISTA'S PROFITS OR THE INFRINGER'S PROFITS. AND THE FIRST

04:07:24 15   PART THAT'S UP HERE ON THE TOP PART IS THE BURDEN OF CISCO.

04:07:28 16   AND SO WHAT CISCO HAS TO DO IS FIRST SHOW A CAUSAL

04:07:38 17   RELATIONSHIP BETWEEN ARISTA'S REVENUES OR PROFITS AND THE

04:07:41 18   COPYRIGHT INFRINGEMENT. SO THEY HAVE TO SHOW A LINK BETWEEN

04:07:43 19   THE REVENUE AND THE PROFIT AND THE COPYRIGHT.

04:07:49 20   AND I BELIEVE THE JURY WILL BE INSTRUCTED ON THE LAW BY

04:07:53 21   HER HONOR, BUT MY UNDERSTANDING IS THAT CISCO MAY SATISFY ITS

04:07:58 22   BURDEN BY SHOWING THAT THE REVENUES IT SEEKS, DERIVED DIRECTLY

04:08:03 23   FROM THE SALES OF THE INFRINGING PRODUCTS.

04:08:05 24   SO THAT'S THE PIECE THAT CISCO IS GOING TO DO, IT'S GOING

04:08:08 25   TO SHOW SOME LENGTH. AND THEN IT'S ALSO GOT TO SHOW JUST THE

04:08:11 1   REVENUES OF ARISTA DERIVED FROM THE INFRINGING PRODUCTS.

04:08:18 2   Q.   AND JUST TO PAUSE YOU THERE. THAT'S WHAT YOU ARE GOING TO

04:08:21 3   DO WITH RESPECT TO DISGORGEMENT TODAY; IS THAT CORRECT?

04:08:23 4   A.   YEAH, THAT'S WHAT I'M GOING TO DO WITH RESPECT TO

04:08:27 5   DISGORGEMENT TODAY.

04:08:28 6   Q.   LET'S GO TO THE NEXT SECTION HERE. WHAT IS ARISTA GOING

04:08:33 7   TO DO IN RESPONSE TO YOUR TESTIMONY?

04:08:35 8   A.   OKAY. SO IT'S ARISTA'S BURDEN TO PROVE DEDUCTIBLE

04:08:38 9   EXPENSES AND ALSO ITS BURDEN TO PROVE THAT PART OF THE PROFITS,

04:08:42 10   IF THERE ARE ANY, THAT ARE ATTRIBUTABLE TO THE FACTORS OTHER

04:08:46 11   THAN THE COPYRIGHTED WORKS.

04:08:47 12   SO IT'S MY UNDERSTANDING THAT ARISTA WILL THEN UNDERTAKE

04:08:51 13   SOME EVIDENCE ABOUT THIS OR SOME OPINION ABOUT THESE DEDUCTIBLE

04:08:57 14   EXPENSES AND APPORTIONMENT, AND THEN IT'S MY UNDERSTANDING THAT

04:09:00 15   I'LL RETURN NEXT WEEK TO PERHAPS OFFER SOME OPINION ON THE

04:09:05 16   EXPENSES AND APPORTIONMENT THAT ARISTA HAS SHOWN OR THAT ARISTA

04:09:10 17   HAS DEMONSTRATED.

04:09:11 18   Q.   SO, DR. CHEVALIER, WE WILL SEE YOU TWICE. WE ARE GOING TO

04:09:15 19   SEE YOU TODAY TO TALK ABOUT THE FIRST STEP, AND THEN YOU WILL

04:09:18 20   COME BACK LATER IN THE WEEK NEXT WEEK TO PROVIDE YOUR REBUTTAL

04:09:21 21   OPINIONS ON DISGORGEMENT; IS THAT CORRECT?

04:09:23 22   A.   IT'S LOOKING LIKE YOU MIGHT SEE ME THREE TIMES, BUT, YES.

04:09:27 23   Q.   OKAY. SO LET US THEN GO TO ARISTA'S GROSS REVENUES WITH

04:09:35 24   RESPECT TO THE CAUSAL RELATIONSHIP OF COPYRIGHT INFRINGEMENT.

04:09:40 25   CAN YOU WALK US THROUGH THIS PARTICULAR DEMONSTRATIVE AND HOW

04:09:43 1   THAT INFORMS YOUR OPINION ABOUT THE GROSS REVENUES FROM ARISTA

04:09:48 2   THAT'S AT ISSUE IN THIS CASE?

04:09:48 3   A.   SURE.

04:09:51 4   SO THE FIRST THING IS THAT ALL ARISTA SWITCHES CURRENTLY

04:09:58 5   AND PREVIOUSLY OFFERED FOR SALE INCORPORATE THE INFRINGING CLI.

04:10:02 6   SO THAT IS WHAT WE NEED TO SHOW FOR THE CAUSAL

04:10:07 7   RELATIONSHIP. SO WE WILL BE LOOKING AT ALL OF ARISTA'S SWITCH

04:10:11 8   SALES.

04:10:11 9   AND IT'S IMPORTANT TO UNDERSTAND THAT THERE'S A DAMAGES

04:10:15 10   PERIOD OVER WHICH THOSE SWITCH SALES ARE GOING TO BE EXAMINED

04:10:23 11   AND THAT'S THIS NICE PICTURE HERE DOWN AT THE BOTTOM.

04:10:28 12   THE DAMAGES PERIOD BEGINS THREE YEARS BEFORE CISCO FILED

04:10:31 13   ITS LAWSUIT, THAT'S WHAT CISCO IS ENTITLED TO. SO THAT BEGINS

04:10:34 14   IN DECEMBER 2011, THE DAMAGES PERIOD ENDS. AND FOR THE

04:10:38 15   PURPOSES OF WHAT I'M GOING TO PRESENT TO YOU, MARCH 2016 IS THE

04:10:43 16   LAST DATE FOR WHICH WE HAVE ARISTA FINANCIAL DATA.

04:10:46 17   SO THE NUMBERS I WILL SHOW YOU WILL BE FROM DECEMBER 2011

04:10:50 18   TO MARCH 2016.

04:10:53 19   Q.   AND WHEN YOU'VE LOOKED AT ALL THE -- AND THESE NUMBERS ARE

04:10:57 20   NOT DISPUTED IN THE CASE; IS THAT CORRECT?

04:10:59 21   A.   THESE NUMBERS ARE NOT DISPUTED, NO.

04:11:01 22   Q.   SO WHEN YOU LOOKED AT ALL THE RECORDS AND FINANCIAL

04:11:05 23   SPREADSHEETS FROM ARISTA, WHAT WAS THE TOTAL CALCULATION FROM

04:11:08 24   DECEMBER OF 2011 TO MARCH OF 2016 IN TERMS OF GROSS REVENUES

04:11:13 25   GENERATED BY ARISTA FROM THE SALE OF THE ACCUSED SWITCHES?

04:11:17   1   A.   OKAY. SO THE REVENUES GENERATED BY THE SALE OF ARISTA

04:11:20   2   SWITCHES IN THE U.S. OVER THIS PERIOD TOTALLED $1.3 BILLION.

04:11:26   3   Q.   OKAY. AND SO AT THIS POINT DO YOU FEEL THAT YOU'VE

04:11:29   4   SATISFIED THE BURDEN THAT CISCO HAS WITH RESPECT TO THE

04:11:32   5   DISGORGEMENT IN PROFITS?

04:11:34   6   A.   THAT'S RIGHT. SO THIS IS -- FOR NOW WHAT WE HAVE TO SAY

04:11:38   7   ABOUT THE DISGORGEMENT OF PROFITS, WE HAVE SATISFIED CISCO'S

04:11:41   8   BURDEN, AND AS I SAID, I EXPECT WE WILL BE BACK AFTER WE TALK

04:11:45   9   ABOUT -- AFTER ARISTA ATTEMPTS TO SATISFY ITS BURDEN.

04:11:50   10   Q.   OKAY. SO THEN WE ARE GOING TO SWITCH NOW TO LOST PROFITS,

04:11:54   11   WHICH IS CISCO'S PROFITS THAT IT LOST AS A RESULT OF ARISTA'S

04:11:57   12   INFRINGEMENT; IS THAT CORRECT?

04:11:58   13   A.   THAT'S CORRECT.

04:11:59   14   Q.   SO HERE, CAN YOU WALK US THROUGH THE STEPS THAT YOU

04:12:03   15   FOLLOWED IN TRYING TO UNDERSTAND WHAT PROFITS CISCO LOST AS A

04:12:10   16   RESULT OF ARISTA'S COPYRIGHT INFRINGEMENT?

04:12:12   17   A.   OKAY. SO THERE'S TWO STEPS HERE. AND SO LET ME MENTION

04:12:16   18   BOTH, AND THEN WE WILL MAYBE BREAK IT DOWN A LITTLE BIT MORE.

04:12:20   19   SO THE FIRST STEP THAT CISCO HAS TO DO IS ESTABLISH

04:12:25   20   SOMETHING THAT ECONOMISTS CALL THE "BUT FOR" WORLD, AND, THAT

04:12:29   21   IS, WHAT WOULD THE WORLD LOOK LIKE IF THIS INFRINGEMENT HADN'T

04:12:34   22   HAPPENED.

04:12:34   23   AND THE REASON WE DO THAT IS WE FIRST ESTABLISH A CAUSAL

04:12:39   24   RELATIONSHIP THAT CISCO HAS LOST PROFITS, AND THEN DETERMINE

04:12:45   25   WHAT ADDITIONAL SALES CISCO WOULD HAVE MADE -- SORRY. YEAH.

04:12:51 1   WHAT ADDITIONAL SALES CISCO WOULD HAVE MADE IN THIS "BUT FOR"

04:12:57 2   WORLD IF THE INFRINGEMENT DIDN'T TAKE PLACE.

04:13:03 3   SO THAT'S IF ARISTA DIDN'T INFRINGE THE COPYRIGHT, HOW

04:13:07 4   MANY MORE SALES WOULD CISCO HAVE MADE.

04:13:08 5   Q.   SO JUST TO BE CLEAR, WE ARE NOT TALKING ABOUT FUTURE

04:13:11 6   SALES, WE ARE GOING BACK IN TIME; IS THAT RIGHT?

04:13:12 7   A.   AGAIN, WE ARE GOING BACK TO TIME. SO WE DON'T HAVE DATA

04:13:15 8   PAST MARCH. SO THIS DAMAGES PERIOD IS THE SAME.

04:13:18 9   Q.   RIGHT. SO IT'S DECEMBER 2011 TO MARCH OF 2016 WE ARE

04:13:23 10   GOING BACK IN TIME?

04:13:24 11   A.   YES.

04:13:24 12   Q.   AND ASKING THE QUESTION, HAD ARISTA NOT INFRINGED CISCO'S

04:13:29 13   COPYRIGHTS, HOW MUCH MORE ADDITIONAL PROFITS WOULD CISCO HAVE

04:13:32 14   MADE DURING THAT SAME TIME PERIOD?

04:13:34 15   A.   RIGHT. DURING THIS PERIOD.

04:13:36 16   Q.   OKAY. GOOD.

04:13:38 17   AND THEN ONCE YOU DO THIS BUT FOR ANALYSIS, WHAT IS THE

04:13:41 18   SECOND STEP IN YOUR ANALYSIS?

04:13:42 19   A.   OKAY. SO WE'VE COME OUT OF THE FIRST STEP WITH THE SALES

04:13:48 20   THAT CISCO WOULD HAVE MADE IF ARISTA DIDN'T INFRINGE ITS

04:13:52 21   COPYRIGHTS.

04:13:53 22   AND THEN IN THE SECOND STEP WE HAVE TO CALCULATE HOW

04:13:59 23   PROFITABLE OR HOW MUCH PROFIT THEY WOULD HAVE MADE FROM THOSE

04:14:02 24   SALES.

04:14:02 25   SO, OF COURSE, IF THEY MADE ADDITIONAL SALES, THEY WOULD

04:14:05 1   HAVE ALSO HAD ADDITIONAL COSTS. SO WE WANTED TO JUST CALCULATE

04:14:09 2   THE LOST PROFITS. SO I NEED TO DEDUCT THOSE COSTS FROM THE

04:14:14 3   SALES.

04:14:15 4   Q.   OKAY. AND I KNOW IT COULD BE A LITTLE BIT CONFUSING BUT

04:14:18 5   HERE WE ALSO SEE AT THE TOP -- AND MAYBE WE CAN HIGHLIGHT THIS,

04:14:21 6   MR. FISHER -- IN THE FIRST STEP IT USES THE WORD CAUSAL

04:14:26 7   RELATIONSHIP TO TALK ABOUT LOST PROFITS.

04:14:27 8   DO YOU SEE THAT?

04:14:28 9   A.   YES.

04:14:28 10   Q.   WE ALSO SAW CAUSAL RELATIONSHIP LANGUAGE IN THE

04:14:32 11   DISGORGEMENT SIDE OF THE CASE AS WELL; CORRECT?

04:14:34 12   A.   YES.

04:14:35 13   Q.   NOW, I KNOW IT USES THE SAME WORDS BUT FOR LOST PROFITS,

04:14:38 14   IS THIS THE SAME CONCEPT OR A DIFFERENT CONCEPT OF CAUSAL

04:14:41 15   RELATIONSHIP FOR LOST PROFITS, BASED ON YOUR UNDERSTANDING?

04:14:44 16   A.   OKAY. SO IT IS NOT COMPLETELY THE SAME. SO BEFORE, WE

04:14:49 17   SIMPLY HAD TO SHOW THE REVENUES THAT WERE ATTRIBUTABLE TO

04:14:54 18   ARISTA'S SALES BUT ARISTA SALES OF INFRINGING PRODUCTS. BUT WE

04:15:01 19   DIDN'T HAVE TO ASK THE QUESTION OF WHY ARISTA MADE THOSE SALES,

04:15:06 20   WHICH IS TO SAY, WE DIDN'T HAVE TO ASK, DID ARISTA MAKE THOSE

04:15:09 21   SALES BECAUSE OF THE INFRINGEMENT.

04:15:12 22   HERE, IN ESTABLISHING LOST PROFITS, WE NEED TO THINK ABOUT

04:15:17 23   WHAT SALES CISCO WOULD HAVE MADE, BUT FOR THE INFRINGEMENT, AND

04:15:21 24   TO DO THAT WE ARE GOING TO LOOK AT THIS "WHY" QUESTION OF WHAT

04:15:29 25   SALES WOULD ARISTA NOT HAVE MADE IF THEY HADN'T INFRINGED

04:15:32 1   CISCO'S COPYRIGHTS.

04:15:34 2   Q.   AND WE ARE GOING TO GET A LOT MORE INTO THIS DETAIL HERE,

04:15:37 3   BUT AT A HIGH LEVEL, DID YOU EVALUATE ANY ECONOMIC FACTORS THAT

04:15:41 4   INFLUENCE CUSTOMER PURCHASE DECISIONS IN PARTICULARLY THE HIGH

04:15:46 5   SPEED DATA CENTER MARKET, ETHERNET SWITCHING MARKET, WHEN YOU

04:15:49 6   WERE THINKING ABOUT THIS QUESTION OF LOST PROFITS?

04:15:51 7   A.   YEAH. SO IT'S HELPFUL TO THINK HERE ABOUT HOW CUSTOMERS

04:15:57 8   SHOULD BE MAKING DECISIONS AND ARE MAKING DECISIONS IN THIS

04:16:00 9   MARKET.

04:16:01 10   SO THE FIRST THING TO UNDERSTAND IS, OF COURSE, THE

04:16:05 11   CUSTOMERS IN THE HIGH SPEED SWITCHING MARKET ARE THEMSELVES,

04:16:11 12   COMPANIES; RIGHT? SO THEY ARE COMPANIES WHO ARE TRYING TO

04:16:14 13   MAXIMIZE THEIR PROFIT, TO PURSUE THEIR BUSINESS.

04:16:17 14   AND SO IN ORDER TO DO THAT, WHEN THEY MAKE A DECISION --

04:16:21 15   WHEN THEY ARE MAKING DECISIONS ABOUT PURCHASING SWITCHES, THEY

04:16:24 16   WANT TO THINK ABOUT THE BENEFITS OFFERED BY THOSE SWITCHES, OF

04:16:30 17   COURSE, AND, YOU KNOW, EVALUATE THOSE. AND THEY WANT TO THINK

04:16:33 18   ABOUT THE PRICE OF THOSE SWITCHES.

04:16:35 19   BUT THEY ALSO WANT TO THINK ABOUT OTHER COSTS ASSOCIATED

04:16:40 20   WITH SETTING UP AND MAINTAINING AND TROUBLE SHOOTING THOSE

04:16:44 21   SWITCHES.

04:16:45 22   SO IT'S IMPORTANT TO REALIZE THAT THE DATA CENTER DOES

04:16:49 23   INVOLVE A LOT OF WORKERS, A LOT OF ENGINEERS, WHO ARE IN CHARGE

04:16:53 24   OF SETTING UP, MAINTAINING, AND TROUBLE SHOOTING SWITCHES. AND

04:16:59 25   THE COST OF DOING THAT IS GOING TO BE PART OF THE

04:17:02 1   DECISION-MAKING WHEN THE CUSTOMER MAKES A PURCHASE DECISION.

04:17:06 2   SO THE CUSTOMER SHOULDN'T JUST THINK ABOUT THE PRICE ON

04:17:08 3   THE BOX, BUT THEY HAVE TO THINK ABOUT ALL OF THE LABOR THAT'S

04:17:12 4   GOING TO BE INVOLVED AND THE DIFFERENT AMOUNT OF LABOR THAT'S

04:17:16 5   GOING TO BE INVOLVED WITH DIFFERENT DECISIONS THAT THEY MIGHT

04:17:18 6   MAKE.

04:17:19 7   Q.   SO YOU'VE TALKED ABOUT OBVIOUSLY THE PRICE OF THE SWITCH

04:17:22 8   AND THE EQUIPMENT YOU BUY, BUT YOU'VE ALSO TALKED ABOUT THIS

04:17:25 9   COST OF THE STAFF THAT'S INVOLVED, THE NETWORK OPERATORS.

04:17:29 10   ARE THERE OTHER FACTORS OR CONTRIBUTORS TO THIS QUESTION

04:17:31 11   OF THE -- WHAT'S CALLED THE OPERATIONAL COST OF HAVING DATA

04:17:36 12   CENTERS WHICH PLAYED A ROLE IN YOUR ANALYSIS?

04:17:38 13   A.   YES, SO THERE ARE OTHER FACTORS. LET ME HIGHLIGHT ONE

04:17:41 14   THAT I THINK IS IMPORTANT. ONE IS THE COST OF HAVING A

04:17:48 15   DOWNTIME OR HAVING A SWITCH -- HAVING THE CENTER GO DOWN,

04:17:52 16   RIGHT, HAVE A PROBLEM.

04:17:54 17   AND THAT'S, OF COURSE, COSTLY BECAUSE THE DATA CENTER IS,

04:17:58 18   YOU KNOW, REALLY IMPORTANT TO RUNNING THE CUSTOMER'S BUSINESS.

04:18:04 19   THERE'S AN INDUSTRY ANALYSIS GROUP, IT'S A THIRD PARTY AND IT

04:18:12 20   HAS ESTIMATED -- IT'S CALLED GARTNER.

04:18:13 21   AND GARTNER HAS ESTIMATED THAT DATA CENTERS BEING DOWN CAN

04:18:20 22   COST $300,000 AN HOUR TO A CUSTOMER. AND SO, THEREFORE,

04:18:25 23   AVOIDING THAT AND ALSO FIXING IT, TROUBLE SHOOTING AND GETTING

04:18:31 24   IT BACK IN SHAPE ARE GOING TO BE -- GETTING IT BACK IN SHAPE

04:18:35 25   QUICKLY ARE GOING TO BE IMPORTANT FACTORS THAT A COMPANY IS

04:18:38 1   GOING TO THINK ABOUT AS PART OF ITS TOTAL COST OF OPERATING A

04:18:41 2   DATA CENTER.

04:18:42 3   Q.   NOW, WHAT I WANT TO DO IS WITH THAT GENERAL REVIEW,

04:18:45 4   DOCTOR, I WANT TO GO INTO THE SPECIFIC EVIDENCE THAT YOU

04:18:47 5   CONSIDERED. AND I KNOW THIS IS JUST A SAMPLE OF EVIDENCE THAT

04:18:51 6   YOU HAVE LOOKED AT, BUT I WANTED TO WALK THROUGH SOME OF THAT

04:18:54 7   EVIDENCE WITH YOU AND THE JURY AND HAVE YOU EXPLAIN THE

04:18:56 8   IMPORTANCE OF THOSE PIECES OF EVIDENCE.

04:18:58 9   A.   OKAY.

04:18:59 10   Q.   OKAY. GREAT.

04:19:00 11   SO LET'S LOOK AT SLIDE 12. AND IT'S TITLED "CAUSAL

04:19:05 12   RELATIONSHIP BETWEEN ARISTA'S SALES AND COPYING."

04:19:07 13   CAN YOU HELP US UNDERSTAND THE ECONOMIC IMPORTANCE OF SOME

04:19:11 14   OF THESE E-MAILS AND ADMISSIONS THAT WE HAVE BEEN SEEING

04:19:16 15   THROUGHOUT THE TRIAL?

04:19:17 16   A.   OKAY. SO AS I JUST SAID, YOU KNOW, THE CUSTOMER SHOULD BE

04:19:20 17   THINKING ABOUT THE HUMAN COSTS OR THE LABOR COSTS OF RUNNING

04:19:25 18   THEIR DATA CENTER AND OPERATING SWITCHES.

04:19:27 19   AND ONE THING THAT WE'VE HEARD A BIT ABOUT AND THAT THESE

04:19:33 20   ITEMS ILLUSTRATE, IS THAT YOU KNOW, THERE IS A RELATIONSHIP

04:19:38 21   BETWEEN THE HUMAN COSTS AND THE ARISTA'S COPYING.

04:19:46 22   SO ARISTA EMPHASIZES IN ITS COMMUNICATIONS WITH

04:19:49 23   CUSTOMERS -- AND THESE ARE INTERNAL E-MAILS ABOUT

04:19:53 24   COMMUNICATIONS THAT ARISTA IS HAVING WITH CUSTOMERS -- THEY

04:19:57 25   EMPHASIZE THE SIMILARITY OF ARISTA'S CLI WITH CISCO'S CLI,

04:20:03 1   BECAUSE, OF COURSE, THE CLI IS HOW THE CUSTOMER IS GOING TO

04:20:08 2   MANAGE THE SWITCHES.

04:20:10 3   SO WE CAN SEE, YOU KNOW, THE FIRST ONE SAYS, WE WOULD GET

04:20:15 4   PRACTICAL DROP-IN REPLACEMENT FOR CISCO, GIVEN THE 99.999

04:20:22 5   SIMILARITY IN THE CLI.

04:20:23 6   THE SECOND ONE FROM 2014 IS TALKING ABOUT ARISTA'S CLI

04:20:30 7   COMPARED TO OTHER COMPETITORS AND IT SAYS, BUT WE HAVE BY FAR

04:20:37 8   THE MOST SIMILAR CLI. AND IT SAYS, WHEREAS WE LIKE TO SAY WE

04:20:41 9   HAVE A TRUE INDUSTRY STANDARD CLI.

04:20:44 10   Q.   OKAY. AND THEN AGAIN, FROM AN ECONOMIC PERSPECTIVE, HOW

04:20:49 11   DO SOME OF THESE ADMISSIONS OR REPRESENTATIONS TO CUSTOMERS

04:20:54 12   THAT WHAT ARISTA IS OFFERING IS A TRUE DROP-IN REPLACEMENT FOR

04:21:00 13   CISCO'S USER INTERFACE, HOW DOES THAT PLAY A ROLE IN THE

04:21:03 14   CUSTOMER DECISION-MAKING PROCESS FROM AN ECONOMIC STANDPOINT?

04:21:07 15   A.   RIGHT. SO YOU CAN SEE THAT A BIT IN THE LAST ONE. SO THE

04:21:11 16   TRANSITION FROM CISCO TO ARISTA IS ONE OF GREAT EASE, THE

04:21:16 17   COMMAND-LINE INTERFACE IS IDENTICAL TO CISCO.

04:21:18 18   SO PART OF, YOU KNOW, ESTABLISHING, GETTING NEW SWITCHES

04:21:25 19   SET UP AND USING THEM IN THE NETWORK IS GOING TO BE THROUGH THE

04:21:31 20   COMMAND-LINE INTERFACE. AND CISCO IS SAYING, YOU KNOW, IF

04:21:34 21   YOU -- I MEAN, ARISTA IS SAYING, IF YOU ARE MOVING FROM A DATA

04:21:38 22   CENTER WITH A LOT OF CISCO SWITCHES AND YOU ARE GOING TO ADD

04:21:40 23   SOME ARISTA SWITCHES, THIS TRANSITION WILL NOT BE COSTLY, IT

04:21:45 24   WILL BE OF GREAT EASE, IT WILL SAVE SOME OF THESE HUMAN LABOR

04:21:49 25   COSTS BECAUSE OF THIS SIMILARITY.

04:21:52 1   MR. PAK: AND, YOUR HONOR, IF --

04:21:54 2   Q.   IF YOU COULD ACTUALLY, DR. CHEVALIER, IF YOU COULD TAKE A

04:21:56 3   LOOK AT EXHIBIT 427 IN YOUR BINDER.

04:21:59 4   A.   OKAY.

04:22:03 5   Q.   AND I WOULD LIKE TO HAVE YOU JUST CONFIRM THAT THIS IS AN

04:22:06 6   E-MAIL SENT FROM MR. BAUMAN, B-A-U-M-A-N, AT ARISTA, TO

04:22:12 7   MR. PAUL DRUCE AND LINCOLN DALE, ALSO AT ARISTA AT THE TIME,

04:22:17 8   AND IT WAS PRODUCED BY ARISTA AND SOMETHING THAT YOU CONSIDERED

04:22:20 9   IN FORMING YOUR ECONOMIC OPINIONS.

04:22:23 10 A.   YES.

04:22:25 11   MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE

04:22:27 12 EXHIBIT 427 INTO THE RECORD.

04:22:29 13   THE COURT: ANY OBJECTION?

04:22:30 14   MR. SILBERT: NO OBJECTION.

04:22:30 15   THE COURT: IT WILL BE ADMITTED.

04:22:32 16   (PLAINTIFF'S EXHIBIT 427 WAS ADMITTED INTO EVIDENCE.)

04:22:32 17 BY MR. PAK:

04:22:32 18 Q.   SO THEN LET'S TAKE A LOOK AT ANOTHER PIECE OF EVIDENCE

04:22:37 19 THAT I THINK THE JURY HAS HEARD ABOUT. AND THIS IS FROM

04:22:41 20 MR. ANSHUL SADANA WHO IS THE CHIEF CUSTOMER OFFICER OF ARISTA.

04:22:48 21   AND CAN YOU EXPLAIN TO US AGAIN THE ECONOMIC SIGNIFICANCE

04:22:52 22 OF THIS STATEMENT IN A HISTORICAL DOCUMENT FROM 2009 AS IT

04:22:57 23 RELATES TO SOME OF THE COST EQUATIONS FOR CUSTOMERS.

04:23:01 24 A.   OKAY. SO THIS DOCUMENT MENTIONS TRAINING. SO LET ME SAY

04:23:06 25 SOMETHING ABOUT TRAINING.

04:23:07   1   WE KNOW THAT PART OF AN ENGINEER USING A SWITCH IS BEING

04:23:12   2   TRAINED TO USE THE SWITCH. WE KNOW THAT MANY ENGINEERS RECEIVE

04:23:17   3   TRAINING THAT IS CISCO SPECIFIC AND INTENSELY USES OR INTENSELY

04:23:26   4   REQUIRES THE ENGINEER TO INTERACT WITH THE CLI IN ORDER TO

04:23:30   5   MANAGE THE SWITCH.

04:23:31   6   AND HERE WHAT MR. SADANA SAYS IS, HENCE, IF WE STAY WITH

04:23:36   7   CISCO'S SYNTAX, THAT WILL WORK WELL. WE JUST WANT TO -- AND

04:23:40   8   I'M OBVIOUSLY SKIPPING A PART, WE JUST WANT TO LEVERAGE ALL THE

04:23:44   9   PARTNER TRAINING THAT CISCO DOES.

04:23:46   10   SO THE IDEA IS, CISCO IS DOING TRAINING, PARTNER TRAINING,

04:23:51   11   AND ARISTA CUSTOMERS CAN BENEFIT FROM THAT.

04:23:56   12   Q.   LET'S TAKE A LOOK AT ANOTHER PIECE OF EVIDENCE, AND THIS

04:24:00   13   IS SLIDE 14. AND THIS APPEARS TO BE, AND YOU CAN TAKE A LOOK

04:24:07   14   AT IT IN YOUR BINDER, BUT IT'S EXHIBIT 4745. IT APPEARS TO BE

04:24:13   15   AN ARTICLE FROM "NETWORK WORLD."

04:24:15   16   AND IT WAS DISCUSSING SOME STATEMENTS BY ARISTA'S CEO

04:24:22   17   JAYSHREE ULLAL, IT SAYS, "CLOUD NETWORKING LEADER COMPLIMENTS

04:24:27   18   CISCO."

04:24:28   19   AND THEN THERE'S SOME Q AND A WITH HER.

04:24:30   20   WOULD YOU MIND EXPLAINING FOR THE JURY AGAIN WHAT IS THE

04:24:34   21   ECONOMIC SIGNIFICANCE OF PUBLIC STATEMENTS LIKE THESE FROM

04:24:36   22   EXECUTIVES AT ARISTA TELLING CUSTOMERS IN THE INDUSTRY ABOUT

04:24:42   23   WHAT IT'S DONE IN COPYING THE CISCO CLI?

04:24:45   24   A.   OKAY. SO YOU KNOW, FIRST, THE QUESTION THAT'S BEING

04:24:49   25   ASKED, THIS IS ACTUALLY AN INTERVIEW. THE QUESTION THAT'S

04:24:52 1   BEING ASKED IS, "SAY I'M A BIG CISCO INSTALLATION TODAY. WHEN

04:24:57 2   WOULD I TALK TO ARISTA? WHAT'S THE NEED THAT OPENING THE

04:25:02 3   DOOR?"

04:25:02 4   AND JAYSHREE ULLAL, THE CEO OF ARISTA REPLIES, IN PART,

04:25:07 5   WELL, "THE TRAINING IS VERY EASY AND A CISCO CCIE EXPERT WOULD

04:25:15 6   BE ABLE TO USE ARISTA RIGHT AWAY, BECAUSE WE HAVE SIMILAR

04:25:20 7   COMMAND-LINE INTERFACES AND OPERATIONAL LOOK AND FEEL. WHERE

04:25:21 8   WE DON'T HAVE TO INVENT, WE DON'T."

04:25:23 9   SO THE IMPORTANCE HERE IS POINTING OUT THAT THE MIGRATION

04:25:27 10   FROM CISCO TO ARISTA WOULD BE MADE CHEAPER AND EASIER BECAUSE

04:25:33 11   AN EXPERT, A CCIE, THAT'S A -- SOMEONE WHO HAS A CISCO

04:25:38 12   CERTIFICATION, WILL BE ABLE TO MOVE TO MANAGING THE ARISTA

04:25:41 13   SWITCHES RIGHT AWAY.

04:25:42 14   Q.   AND I WANT TO TALK ABOUT WHAT YOU JUST SAID. CHEAPER AND

04:25:46 15   EASIER. SO LET'S THINK ABOUT POTENTIAL CUSTOMERS WHO ARE

04:25:49 16   THINKING OF MIGRATING FROM CISCO TO ARISTA.

04:25:54 17   CAN YOU EXPLAIN TO THE JURY WHY HAVING A CISCO CLI OR A

04:25:58 18   COPY OF THE CISCO CLI WOULD MAKE IT EASIER AND FASTER FOR

04:26:02 19   POTENTIAL CUSTOMERS TO MIGRATE?

04:26:06 20   A.   OKAY. SO, AGAIN, THE COST OF MIGRATION INVOLVES THE COST

04:26:10 21   OF TRAINING THE ENGINEERS TO BANISH THE SYSTEM AND ALSO TO SET

04:26:17 22   UP THE SYSTEM, TROUBLE SHOOT THE SYSTEM, AND MONITOR THE

04:26:20 23   SYSTEM.

04:26:21 24   AND SO THE HUMAN COST OF DOING THAT IS GOING TO BE LOWER

04:26:24 25   IF THE ENGINEERS ALREADY KNOW HOW TO DO THAT BECAUSE OF THEIR

04:26:28 1   TRAINING FOR THE CISCO PRODUCTS.

04:26:31 2   Q.   OKAY. AND AT THIS TIME -- ACTUALLY, TAKE A LOOK AT 4745,

04:26:36 3   DR. CHEVALIER. AND CAN YOU PLEASE CONFIRM THAT EXHIBIT 4745 IS

04:26:41 4   A PUBLICATION THAT YOU REVIEWED IN CONNECTION WITH YOUR DAMAGES

04:26:45 5   EXPERT OPINIONS?

04:26:52 6   A.   YES, THIS IS THE ONE WE JUST DISCUSSED.

04:26:54 7   MR. PAK: OKAY. YOUR HONOR, I WOULD LIKE TO ADMIT

04:26:57 8   INTO EVIDENCE EXHIBIT 4745.

04:26:58 9   THE COURT: ANY OBJECTION?

04:27:00 10   MR. SILBERT: NO OBJECTION.

04:27:01 11   THE COURT: IT WILL BE ADMITTED.

04:27:02 12   (PLAINTIFF'S EXHIBIT 4745 WAS ADMITTED INTO EVIDENCE.)

04:27:02 13   BY MR. PAK:

04:27:02 14   Q.   LET'S TAKE A LOOK AT SOME MORE DOCUMENTATION THAT YOU

04:27:05 15   CONSIDERED, AND THIS IS ON SLIDE 15 OF YOUR PRESENTATION. AND

04:27:10 16   CAN YOU TELL US THE SIGNIFICANCE OF WHAT WE ARE SEEING ON THIS

04:27:14 17   SLIDE.

04:27:16 18   A.   ALL RIGHT. SO FAR WE HAVE BEEN TALKING ABOUT ARISTA'S

04:27:20 19   REPRESENTATION TO CUSTOMERS ABOUT THE EASE OF USING ARISTA'S

04:27:25 20   PRODUCTS.

04:27:27 21   THIS DOCUMENT IS -- IT IS A PUBLICATION FOR IT

04:27:31 22   PROFESSIONALS. SO IT'S A THIRD-PARTY PUBLICATION. AND THIS

04:27:35 23   DOCUMENT SHOWS THAT THIRD-PARTY PUBLICATIONS ARE -- THIRD

04:27:41 24   PARTIES ARE NOTICING THAT ARISTA HAS THESE BENEFITS IN TERMS OF

04:27:46 25   TRANSITION FROM CISCO.

04:27:48 1   AND IT SAYS, "ARISTA CREATED A CLI (COMMAND-LINE

04:27:52 2   INTERFACE) THAT LOOKS AND ACTS VERY MUCH LIKE CISCO'S."

04:27:54 3   AND THEN THERE'S SOME DETAIL THERE. AND IT SAYS, SO THERE

04:27:59 4   ARE A LOT OF FOLKS OUT THERE THAT ARE PROFICIENT WITH THE CISCO

04:28:04 5   EXPAND LINE AND USER INTERFACE. ARISTA IS A REAL NATURAL FIT

04:28:07 6   FOR THEM.

04:28:07 7   Q.   AND, AGAIN, IT'S HAPPENING IN THE MARKET PLACE FROM AN

04:28:11 8   ECONOMIC STANDPOINT, WHEN DUE TO ARISTA'S MARKETING EFFORTS AND

04:28:14 9   THEIR PUBLICITY, THAT THIRD PARTIES AND PUBLICATIONS ARE

04:28:18 10 NOTICING THAT ARISTA'S CLI AND USER INTERFACE IS VERY MUCH LIKE

04:28:22 11 CISCO'S, WHAT'S HAPPENING IN THE MARKET PLACE?

04:28:26 12 A.   OKAY. SO THAT IS, YOU KNOW -- THE CUSTOMERS ARE

04:28:33 13 UNDERSTANDING OR ARE BEING TOLD OR UNDERSTANDING THAT THEIR

04:28:37 14 MIGRATION FROM CISCO, WHO IS OBVIOUSLY THE MARKET LEADER TO

04:28:41 15 ARISTA, WOULD BE EASIER AND CHEAPER.

04:28:43 16 Q.   OKAY. LET'S LOOK AT SOME MORE PIECES OF EVIDENCE. AND I

04:28:49 17 WOULD ACTUALLY LIKE TO JUST CONFIRM AGAIN, DR. CHEVALIER, TAKE

04:28:53 18 A LOOK AT 565 AND CONFIRM THAT IT'S ONE OF THE DOCUMENTS THAT

04:28:57 19 YOU CONSIDERED IN FORMING YOUR ECONOMIC OPINIONS IN THIS CASE?

04:29:01 20 A.   LET ME JUST LOOK IN THE BINDER.

04:29:12 21   YES.

04:29:13 22   MR. PAK: OKAY. AND I WOULD LIKE TO ACTUALLY ADMIT

04:29:16 23 EXHIBIT 565 INTO EVIDENCE.

04:29:18 24   THE COURT: ANY OBJECTION?

04:29:19 25   MR. SILBERT: NO OBJECTION.

04:29:19 1   THE COURT: IT WILL BE ADMITTED.

04:29:21 2   (PLAINTIFF'S EXHIBIT 565 WAS ADMITTED INTO EVIDENCE.)

04:29:21 3   BY MR. PAK:

04:29:21 4   Q.   OKAY. AND THEN I WOULD LIKE IT TALK ABOUT THE NEXT PIECE

04:29:24 5   OF EVIDENCE, WHICH IS SLIDE 16. AND NOW WE ARE GETTING A

04:29:30 6   LITTLE MORE SPECIFIC NOW WITH SOME CUSTOMERS AND, AGAIN,

04:29:35 7   SAMSUNG IS THE CUSTOMER THAT'S BEING DISCUSSED IN THIS

04:29:38 8   PARTICULAR PIECE; IS THAT CORRECT?

04:29:41 9   A.   RIGHT. SAMSUNG IS A POTENTIAL CUSTOMER.

04:29:43 10   Q.   POTENTIAL CUSTOMER.

04:29:45 11   A.   RIGHT.

04:29:45 12   Q.   SO I WOULD LIKE TO, AGAIN, HAVE YOU EXPLAIN THE ECONOMIC

04:29:51 13   IMPORTANCE OF SEEING SOME OF THESE CUSTOMER INTERACTIONS

04:29:54 14   INVOLVING ARISTA'S CLI AND ITS SIMILARITY TO CISCO'S CLI?

04:29:58 15   A.   OKAY. SO THIS IS -- YOU KNOW, THIS DOCUMENT IS A

04:30:03 16   DISCUSSION BETWEEN EXECUTIVES AT ARISTA. AND I THINK IT'S

04:30:07 17   WORTH NOTING THAT, OF COURSE, WE DON'T TYPICALLY HAVE A RECORD

04:30:10 18   OF ACTUAL MEETINGS THAT WERE PHONE CALLS THAT TAKE PLACE

04:30:15 19   BETWEEN CUSTOMERS, WE OFTEN DON'T SEE THEM IN THE RECORD

04:30:18 20   SURVIVING TODAY, OF INTERACTIONS, ALL THE INTERACTIONS BETWEEN

04:30:24 21   CUSTOMERS AND ARISTA.

04:30:25 22   SO THIS IS AN INTERNAL DISCUSSION, BUT IT SAYS, "DOUG

04:30:31 23   THOUGHT IT MAY BE GOOD TO SHOW SIDE-BY-SIDE COMPARISONS OF

04:30:35 24   ARISTA'S CLI AND CISCO'S CLI, TO GIVE THE SAMSUNG

04:30:38 25   INFRASTRUCTURE GUYS A WARM AND FUZZY."

04:30:42 1   SO BASICALLY I WANT TO USE THESE TO SHOW HOW SIMILAR WE

04:30:45 2   ARE TO THE CISCO CLI SYNTAX.

04:30:47 3   AND, AGAIN, WHY IS THAT SO IMPORTANT TO CUSTOMERS?

04:30:49 4   BECAUSE IT LOWERS THE CUSTOMER'S MIGRATION COST TO ARISTA.

04:30:52 5   Q.   AND TAKE A LOOK AT EXHIBIT 230 IN YOUR BINDER, AND CAN YOU

04:30:56 6   CONFIRM THAT THIS IS AN ARISTA E-MAIL THAT WAS PRODUCED BY

04:31:00 7   ARISTA IN SOMETHING YOU CONSIDERED IN FORMING YOUR ECONOMIC

04:31:04 8   OPINIONS IN THIS CASE?

04:31:14 9   A.   YES.

04:31:15 10   Q.   OKAY.

04:31:16 11   MR. PAK: YOUR HONOR, I WOULD LIKE TO ADMIT

04:31:18 12   EXHIBIT 230 INTO THE RECORD.

04:31:19 13   MR. SILBERT: YOUR HONOR, MY UNDERSTANDING IS THIS

04:31:21 14   CONCERNS A SALE OUTSIDE OF THE UNITED STATES, OR POTENTIAL

04:31:25 15   SALE, WHICH WOULD NOT BE RELEVANT.

04:31:33 16   THE COURT: I GUESS I WILL NEED A COPY OF THE

04:31:35 17   DOCUMENT, UNLESS, MR. PAK, YOU ARE ABLE TO --

04:31:38 18   MR. PAK: YOU KNOW WHAT, YOUR HONOR, WHY DON'T WE --

04:31:43 19   WE DON'T HAVE MR. FOSS HERE, BUT LET ME APPROACH IT THIS WAY.

04:31:47 20   I WON'T MOVE IT INTO EVIDENCE AT THIS TIME. I WOULD LIKE

04:31:50 21   TO COME BACK TO THAT ONCE WE LOOK INTO THE FOUNDATION ISSUE.

04:31:53 22   THE COURT: SURE.

04:31:54 23   MR. PAK: AND WE WILL PROCEED.

04:31:55 24   Q.   SO, DR. CHEVALIER, IF YOU COULD TAKE A LOOK AT SLIDE 17.

04:32:01 25   A.   YEP.

04:32:02 1   Q.   AND THIS IS SOMETHING THAT I THINK NEEDS A LITTLE BIT OF

04:32:06 2   AN EXPLANATION.

04:32:10 3   A.   17?

04:32:11 4   Q.   17. ACTUALLY -- CAN YOU JUMP TO SLIDE 17, MR. FISHER.

04:32:18 5   YES, THANK YOU.

04:32:19 6   SO HERE WE HAVE A DOCUMENT THAT'S BEEN PRODUCED BY ARISTA,

04:32:24 7   AND YOU JUST -- BEFORE YOU GET INTO THE SUBSTANCE, CAN YOU

04:32:27 8   EXPLAIN TO THE JURY WHAT IT MEANS TO HAVE A REQUEST FOR

04:32:30 9   PROPOSAL RESPONSE AND HOW THAT FITS INTO ARISTA'S SALES

04:32:35 10   CAMPAIGN.

04:32:36 11   A.   OKAY. SO OFTENTIMES CUSTOMERS OR POTENTIAL CUSTOMERS

04:32:42 12   ISSUE SOMETHING CALLED A REQUEST FOR PROPOSAL IN WHICH THEY

04:32:46 13   INVITE VENDORS TO PROVIDE THEM DETAILS ABOUT HOW THE VENDOR'S

04:32:53 14   PRODUCTS CAN SERVE THE CUSTOMER'S NEEDS.

04:32:56 15   SO AT LEAST PART OF THE RESPONSE TO A REQUEST FOR PROPOSAL

04:33:01 16   WOULD BE SPECIFIC -- WOULD BE SOMETHING PREPARED BY THE VENDORS

04:33:05 17   WHICH IS SPECIFIC TO THE CUSTOMER. SO, OF COURSE, IT WILL

04:33:07 18   CONTAIN PARTS THAT THE VENDOR MIGHT ALSO USE FOR MULTIPLE

04:33:12 19   CUSTOMERS.

04:33:12 20   SO THIS IS A RESPONSE TO A CUSTOMER WHO HAS SAID, WE ARE

04:33:17 21   LOOKING TO BUY.

04:33:18 22   Q.   SO THIS IS -- YOU HAVE A POTENTIAL CUSTOMER WHO SAYS, GIVE

04:33:22 23   ME SOME REQUESTS FOR PROPOSALS AND SENDS OUT A REQUEST FOR

04:33:28 24   PROPOSALS TO A NUMBER OF VENDORS?

04:33:29 25   A.   CORRECT.

04:33:30 1   Q.   THEN THEY PREPARE RESPONSES TO THE PROPOSALS AND WHAT WE

04:33:34 2   ARE LOOKING AT IS ARISTA'S RESPONSE TO A POTENTIAL CUSTOMER?

04:33:38 3   A.   CORRECT, CORRECT.

04:33:38 4   Q.   SO I WANT TO JUST NOW FOCUS ON THE LEFT-HAND SIDE.

04:33:41 5   IT'S A LITTLE BIT OBSCURED, BUT, MR. FISHER, IF YOU COULD

04:33:46 6   UNDERLINE ARIZONA PUBLIC SERVICE COMPANY OR, APS, AND THEN

04:33:50 7   UNDERNEATH IT SAYS DATA CENTER CORE PROJECT.

04:33:54 8   SO THIS WAS A PROPOSAL TO THE ARIZONA PUBLIC SERVICE

04:33:58 9   COMPANY; IS THAT CORRECT?

04:33:58 10   A.   CORRECT.

04:33:59 11   Q.   AND IS THAT A SALES OPPORTUNITY HERE IN THE UNITED STATES?

04:34:02 12   A.   YES.

04:34:03 13   Q.   AND SO THE LOGO, YOU PUT THE LOGO THERE, APS.

04:34:09 14   AND WITH THAT CONTEXT, WOULD YOU HELP US UNDERSTAND, AGAIN

04:34:11 15   FROM AN ECONOMIC STANDPOINT, THE IMPORTANCE OF SOME OF THESE

04:34:15 16   STATEMENTS THAT WE ARE SEEING BEING MADE BY ARISTA SALES PEOPLE

04:34:19 17   TO POTENTIAL CUSTOMERS IN DESCRIBING THE ARISTA CLI?

04:34:23 18   A.   RIGHT. SO, YOU KNOW, THEY ARE ADDRESSING THE FACT THAT,

04:34:26 19   YOU KNOW, CUSTOMERS SHARE THEIR HESITANCY TO DEPLOY AN ARISTA

04:34:31 20   INFRASTRUCTURE BECAUSE OF FEAR AND COST OF TRAINING AN ENTIRE

04:34:36 21   ARMY OF ENGINEERS TO DESIGN, IMPLEMENT, AND OPERATE A NEW

04:34:41 22   VENDOR SOLUTION.

04:34:43 23   AND HERE YOU CAN SEE THAT THEY DESCRIBE HOW WHAT THEY CALL

04:34:46 24   THE INDUSTRY CLI, ALLOWS THE MIGRATION COSTS TO BE LOWER. IT

04:34:53 25   SAYS, "ALL THIS ELIMINATES ANY MYTH THAT EXISTING ENGINEERS

04:35:00 1   NEED TO BE TRAINED TO AID WITH THE MIGRATION."

04:35:03 2   SO THEY ARE TELLING CUSTOMERS, IF YOU ADOPT ARISTA, YOU

04:35:08 3   CAN AVOID THESE RETRAINING COSTS. SO YOU CAN MAKE THE

04:35:14 4   TRANSITION AT LOW COSTS.

04:35:15 5   Q.   AND LET'S JUST MAKE SURE WE HAVE THE RIGHT INFRASTRUCTURE

04:35:20 6   IN MIND WHEN WE ARE THINKING ABOUT WHAT IS IT THEY ARE TELLING

04:35:23 7   CUSTOMERS TO MIGRATE AWAY FROM.

04:35:25 8   SO IF YOU COULD READ INTO THE RECORD THE TWO PRIOR

04:35:27 9   SENTENCES STARTING WITH "VERY OFTEN" AND HAVE YOU EXPLAIN SOME

04:35:31 10   OF THE IMPORTANCE OF THAT STATEMENT.

04:35:33 11   A.   "VERY OFTEN EXISTING CUSTOMERS CAN OFTEN COPY AND PASTE

04:35:38 12   THE CONFIGURATIONS FROM THEIR EXISTING CISCO INFRASTRUCTURE

04:35:47 13   ONTO AN ARISTA SWITCH AND 90 PLUS PERCENT OF THE COMMANDS WILL

04:35:51 14   TAKE. ARISTA HAS GONE TO EXTRAORDINARY LENGTHS TO ENSURE THAT

04:35:54 15   ALL CONFIGURATIONS AND TROUBLE SHOOTING COMMANDS FOLLOW

04:35:57 16   INDUSTRY CLI."

04:35:57 17   Q.   AND WHAT IS THIS SPECIFIC COMPANY THAT'S IDENTIFIED AS THE

04:36:01 18   COMPANY WHOSE CONFIGURATIONS AND COMMANDS CAN BE COPIED AND

04:36:06 19   PASTED FROM AND APPLIED TO AN ARISTA SWITCH?

04:36:10 20   A.   WELL, SO THEY ARE SAYING YOU CAN MIGRATE FROM YOUR

04:36:13 21   EXISTING CISCO INFRASTRUCTURE.

04:36:15 22   Q.   AND, AGAIN, IF YOU GO DOWN A LITTLE BIT FURTHER, HAVE YOU

04:36:19 23   SEEN LANGUAGE LIKE THIS IN OTHER TYPES OF REQUESTS FOR PROPOSAL

04:36:22 24   RESPONSES WHEN YOU WERE REVIEWING ALL THE EVIDENCE IN THE CASE?

04:36:26 25   A.   YES, ABSOLUTELY.

04:36:27 1   Q.   SO IF YOU TAKE A LOOK AT THE BOTTOM OF THAT SLIDE, AND,

04:36:30 2   AGAIN, HELP US UNDERSTAND THE ECONOMIC IMPORTANCE OF WHAT WE

04:36:33 3   ARE SEEING ON THE BOTTOM OF THAT SLIDE?

04:36:35 4   A.   YES.   SO, AGAIN, AVOIDS RETRAINING COSTS, AND IT SAYS, "IF

04:36:42 5   A NETWORK ADMINISTRATOR IS FAMILIAR WITH CISCO CLI, IT WOULD

04:36:47 6   TAKE THEM ABOUT FOUR MINUTES TO BE COMFORTABLE IN AN ARISTA CLI

04:36:51 7   ENVIRONMENT AS THEY ARE PRACTICALLY IDENTICAL".

04:36:54 8   Q.   NOW, WHEN ARISTA WAS MAKING THESE STATEMENTS, WAS ARISTA

04:36:58 9   TELLING POTENTIAL CUSTOMERS, LOOK, OUR CLI MIGHT BE THE SAME

04:37:01 10   BUT BECAUSE OUR CODE IS DIFFERENT, THAT YOUR MIGRATION WOULD

04:37:05 11   HAVE SOME ISSUES, THAT WOULD BE DIFFICULT TO MIGRATE BECAUSE

04:37:08 12   OUR CODE IS DIFFERENT.

04:37:10 13   DO YOU SEE ANY STATEMENTS TO THAT OBJECTION?

04:37:12 14   MR. SILBERT: OBJECTION.   LEADING AND SPECULATION.

04:37:14 15   THE COURT: IT'S NOT SPECULATIVE BUT WHY DON'T YOU

04:37:17 16   REPHRASE IT.

04:37:17 17   MR. PAK: YES, YOUR HONOR.   I WILL.

04:37:19 18   Q.   WE'VE SEEN STATEMENTS LIKE THIS THAT TALK ABOUT THE

04:37:21 19   IMPORTANCE OF CLI SIMILARITY IN TERMS OF MIGRATION FROM

04:37:25 20   CUSTOMERS WHO WERE WORKING ON CISCO PRODUCTS TO ARISTA

04:37:30 21   PRODUCTS.

04:37:30 22   HAVE YOU SEEN ANY STATEMENTS IN THE RECORD FROM ARISTA

04:37:33 23   THAT TALKS ABOUT SIMILARITY OR DISSIMILARITY OF THE CODE,

04:37:37 24   SOURCE CODE IN TERMS OF ITS IMPACT ON THE MIGRATION FROM CISCO

04:37:42 25   CUSTOMERS TO ARISTA CUSTOMERS?

04:37:43 1   A.   SO I PERSONALLY HAVE NOT SEEN ANY SUCH EVIDENCE, AND I

04:37:47 2   HAVE SEEN A NUMBER OF THINGS LIKE THIS.

04:37:49 3   Q.   OKAY. THANK YOU.

04:37:52 4   AND LET'S TAKE A LOOK AT ANOTHER DOCUMENT, WHICH I BELIEVE

04:37:54 5   IS ALREADY -- ACTUALLY, LET ME ADMIT THIS ONE INTO THE RECORD.

04:38:00 6   IF YOU COULD TAKE A LOOK, DR. CHEVALIER, AT EXHIBIT 559 AND

04:38:06 7   CONFIRM THIS IS SOMETHING YOU CONSIDERED IS A DOCUMENT PRODUCED

04:38:10 8   BY ARISTA?

04:38:16 9   THE WITNESS: YES, THIS IS THE DOCUMENT.

04:38:18 10   MR. PAK: OKAY. YOUR HONOR, I WOULD LIKE TO MOVE

04:38:20 11   EXHIBIT 559 INTO EVIDENCE.

04:38:21 12   MR. SILBERT: NO OBJECTION.

04:38:22 13   THE COURT: IT WILL BE ADMITTED.

04:38:23 14   (PLAINTIFF'S EXHIBIT 559 WAS ADMITTED INTO EVIDENCE.)

04:38:23 15   BY MR. PAK:

04:38:25 16   Q.   THEN LOOKING AT SLIDE 18, THIS ONE HAS ALREADY BEEN

04:38:28 17   ADMITTED INTO EVIDENCE, I BELIEVE, 229.

04:38:31 18   THE CLERK: YES.

04:38:32 19   MR. PAK: THANK YOU VERY MUCH.

04:38:33 20   Q.   SO LOOKING AT THIS ONE, THIS IS TALKING ABOUT FACEBOOK;

04:38:37 21   CORRECT?

04:38:37 22   A.   UH-HUH.

04:38:38 23   Q.   SO IT'S THE SAME FACEBOOK THAT WE ALL USE AND LOVE OR

04:38:43 24   HATE. SO LOOKING AT THIS DOCUMENT, CAN YOU EXPLAIN THE

04:38:46 25   ECONOMIC SIGNIFICANCE OF WHAT WE ARE SEEING HERE IN AN E-MAIL

04:38:49   1   EXCHANGE BETWEEN MARK FOSS AT ARISTA AND SOME OF THE EMPLOYEES

04:38:53   2   AT FACEBOOK?

04:38:54   3   A.   ALL RIGHT.   SO, AGAIN, FACEBOOK IS A POTENTIAL CUSTOMER AT

04:39:00   4   THIS TIME, AND THE E-MAIL IS TO PEOPLE AT FACEBOOK.   AND IT

04:39:08   5   SAYS, "AS I MENTIONED TO DAN LAST NIGHT, THE CLI COMMANDS ON

04:39:12   6   OUR SWITCH ARE IDENTICAL TO CISCO IOS SO THERE SHOULD BE NO

04:39:17   7   LEARNING CURVE TO GET IT CONFIGURED."

04:39:19   8   SO, AGAIN, WE DON'T QUITE KNOW ABOUT THE PHONE CALL THAT

04:39:21   9   PRECEDED IT, BUT IT'S RESPONSIVELY SAYING, YOU KNOW, THERE

04:39:25   10   SHOULD BE NO LEARNING CURVE, YOU CAN LOWER YOUR COSTS BY -- YOU

04:39:28   11   CAN HAVE LOW COSTS OF MIGRATION TO ARISTA.

04:39:31   12   Q.   AND THIS IS WHAT ARISTA WAS TELLING PEOPLE AT FACEBOOK;

04:39:35   13   CORRECT?

04:39:35   14   A.   YES.

04:39:35   15   Q.   AND LET'S LOOK AT -- OH, OKAY.

04:39:46   16   LET ME JUST -- I THINK WE MAY NOT ACTUALLY HAVE THIS

04:39:49   17   PARTICULAR ONE, EXHIBIT 229.   IS THAT ONE THAT'S IN EVIDENCE?

04:39:55   18   OKAY.   SO LET ME MOVE IT INTO EVIDENCE TO BE SAFE, YOUR HONOR?

04:39:59   19   THE COURT: ANY OBJECTION ON 229?

04:40:01   20   MR. SILBERT: NO OBJECTION.

04:40:02   21   THE COURT: IT WILL BE ADMITTED.

04:40:04   22   (PLAINTIFF'S EXHIBIT 229 WAS ADMITTED INTO EVIDENCE.)

04:40:04   23   MR. PAK: THANK YOU, YOUR HONOR.

04:40:06   24   THANK YOU, MR. NELSON.

04:40:08   25   Q.   SO LOOKING AT SLIDE 19, THIS IS A -- AN ARISTA DOCUMENT

04:40:15 1   THAT WAS CREATED BEFORE THE LITIGATION. CAN YOU HELP US

04:40:18 2   UNDERSTAND WHAT THIS DOCUMENT IS TELLING POTENTIAL CUSTOMERS

04:40:22 3   AND AGAIN THE ECONOMIC SIGNIFICANCE OF THAT?

04:40:25 4   A.   OKAY. SO ONE THING TO JUST MIX THIS UP A LITTLE BIT IS,

04:40:33 5   WE KNOW THAT WE'VE HEARD -- I'VE HEARD MR. DUDA TALK ABOUT THIS

04:40:39 6   HERE IN COURT ON WEDNESDAY, THAT THERE ARE DIFFERENT KINDS OF

04:40:42 7   CUSTOMERS AND SOME CUSTOMERS DO MORE KIND OF HUMAN INTERACTION

04:40:48 8   WITH THE SWITCH AND SOME CUSTOMERS RELY ON MORE AUTOMATED TOOLS

04:40:53 9   TO INTERACT WITH THE SWITCH.

04:40:56 10   AND SO THIS ONE SAYS YOU CAN COPY YOUR INCUMBENT VENDOR

04:41:04 11   CONFIGURATION AND PASTE THAT CONFIGURATION TO ARISTA'S CLI. SO

04:41:06 12   YOU CAN, YOU KNOW, YOUR CONFIGURATION TOOLS CAN MOVE RIGHT

04:41:12 13   OVER.

04:41:13 14   Q.   OKAY. AND SO, AGAIN, THIS IMPACT ON THE OPERATIONAL COST,

04:41:17 15   HOW DOES STATEMENTS LIKE THIS HELP POTENTIAL CUSTOMERS LOWER

04:41:22 16   THE COST OF MIGRATION FROM CISCO'S EQUIPMENT TO ARISTA'S

04:41:26 17   EQUIPMENT, EVEN WHEN THEY ARE USING AUTOMATION TOOLS?

04:41:29 18   A.   OKAY. SO THIS TELLS THEM THAT THEIR SCRIPTS WILL MOVE

04:41:33 19   RIGHT OVER. SO EVEN IF THEY ARE USING THOSE SCRIPTS, MY

04:41:36 20   UNDERSTANDING IS THOSE SCRIPTS TYPICALLY WRITE TO THE CLI.

04:41:39 21   AND SO THOSE AUTOMATED TOOLS THAT YOU ARE USING CAN JUST

04:41:42 22   MOVE RIGHT OVER, IT WILL COST -- YOU WILL NOT HAVE TO REWRITE

04:41:47 23   THOSE AUTOMATED TOOLS IF YOU ARE ADDING ARISTA SWITCHES INTO

04:41:50 24   YOUR DATA CENTER.

04:41:51 25   Q.   AND, DR. CHEVALIER, IF YOU CAN LOOK AT EXHIBIT 240 AND

04:41:57 1   CONFIRM IT'S A DOCUMENT THAT WAS PRODUCED BY ARISTA THAT YOU

04:42:01 2   RELIED UPON?

04:42:13 3   A.   YEP, THIS IS THE ONE.

04:42:14 4   Q.   OKAY.

04:42:16 5   MR. PAK: AND I WOULD LIKE TO MOVE EXHIBIT 240 INTO

04:42:19 6   EVIDENCE YOUR HONOR.

04:42:19 7   THE COURT: ANY OBJECTION?

04:42:21 8   MR. SILBERT: NO OBJECTION.

04:42:21 9   THE COURT: IT WILL BE ADMITTED.

04:42:23 10   (PLAINTIFF'S EXHIBIT 240 WAS ADMITTED INTO EVIDENCE.)

04:42:23 11   BY MR. PAK:

04:42:23 12   Q.   LET'S LOOK AT A FEW MORE PIECES OF EVIDENCE AND THEN WE

04:42:27 13   WILL GET TO THE CALCULATIONS THAT YOU DID, DOCTOR. SO THE LAST

04:42:31 14   SLIDE, SLIDE 20, WHAT ARE WE LOOKING AT IN TERMS OF THE

04:42:34 15   INDIVIDUAL PIECES OF EVIDENCE THAT ARE ON THIS SLIDE?

04:42:37 16   A.   OKAY. SO THESE ARE SOME, AGAIN, INTERNAL CONVERSATIONS

04:42:41 17   AMONG ARISTA EMPLOYEES ABOUT WHY SPECIFIC CUSTOMER DEALS WERE

04:42:48 18   WON. SO THESE ARE REFLECTIONS ON WHY WE WON, WHAT WERE OUR KEY

04:42:53 19   SELLING POINTS. SO THESE ARE ALL SUCCESSES.

04:42:57 20   AND IN THESE INSTANCES THEY CITE THE FAMILIAR CLI, THE CLI

04:43:02 21   IS CISCO-LIKE, AS FAMILIARITY WITH THE CLI, AS REASONS WHY WE

04:43:08 22   WON; RIGHT? SO THIS IS TELLING US FOR THESE CUSTOMERS, THE CLI

04:43:13 23   WAS A KEY FACTOR.

04:43:16 24   Q.   AND CAN YOU IDENTIFY ON THE RECORD THE THREE CUSTOMERS YOU

04:43:19 25   IDENTIFIED?

04:43:19   1   A.   SURE.   THIS IS PREMIERE, ALEGACY, AND MEDICAL MUTUAL.

04:43:25   2   Q.   NOW, ARE THESE THE ONLY EXAMPLES YOU HAVE SEEN IN THE

04:43:28   3   RECORD, OR ARE THESE JUST EXAMPLES YOU ARE PORTRAYING AS BEING

04:43:31   4   REPRESENTATIVE OF THE EVIDENCE?

04:43:32   5   A.   THESE ARE NOT THE ONLY EXAMPLES.

04:43:35   6   Q.   OKAY.   AND HOW IMPORTANT WAS THE CLI?   WAS IT THE MOST

04:43:39   7   IMPORTANT FACTOR?

04:43:41   8   A.   SO I THINK THIS IS ACTUALLY IMPORTANT TO UNDERSTAND.   SO

04:43:47   9   WE KNOW THAT ARISTA IS TARGETING CISCO CUSTOMERS LARGELY, AND

04:43:52   10   THAT ARISTA HAS A CLI WHICH IS PRACTICALLY IDENTICAL TO

04:43:59   11   CISCO'S.

04:44:01   12   SO -- AND WE KNOW THAT LOTS OF FACTORS ARE IMPORTANT WHEN

04:44:06   13   CHOOSING A SWITCH; RIGHT?   SO, YOU KNOW, THEY HAVE LOTS OF

04:44:09   14   FEATURES AND VARIOUS THINGS; RIGHT?

04:44:10   15   AND SO WHEN YOU THINK ABOUT COMPETITION BETWEEN CISCO AND

04:44:13   16   ARISTA, THE CISCO -- THE CLI CAN'T BE THE REASON WHY ARISTA

04:44:21   17   WON, RIGHT, BECAUSE THAT'S PARITY.

04:44:24   18   Q.   LET ME PAUSE YOU THERE BECAUSE I THINK THAT'S SOMETHING

04:44:27   19   IMPORTANT.

04:44:27   20   A.   OKAY.

04:44:27   21   Q.   SO YOU JUST SAID HAVING A CISCO CLI OR A COPY OF CISCO CLI

04:44:34   22   CAN'T BE THE REASON WHY ARISTA WON BECAUSE OF PARITY.   CAN YOU

04:44:40   23   EXPLAIN WHAT YOU MEAN BY THAT STATEMENT?

04:44:42   24   A.   OKAY.   SO YOU KNOW, IF CISCO -- IF ARISTA IS COPYING

04:44:46   25   CISCO'S CLI, AND WE ARE THINKING ABOUT TRYING TO COMPETE FOR A

04:44:53 1   CISCO CUSTOMER, IT CAN'T BE THE CLI ITSELF AS THE REASON ARISTA

04:44:59 2   GOT THE CUSTOMER FROM CISCO BECAUSE THE ARISTA'S CLI IS NOT, IT

04:45:05 3   IS NOT A DIFFERENTIATOR VERSUS CISCO.

04:45:09 4   HOWEVER, THAT IS NOT THE SAME THING AS SAYING, BUT THERE'S

04:45:13 5   A DIFFERENT QUESTION WHICH IS IMPORTANT FOR THIS CAUSALITY THAT

04:45:17 6   WE ARE TALKING ABOUT, WHICH IS, WOULD THE SALE HAVE HAPPENED,

04:45:22 7   ABSENT THE CLI; RIGHT?

04:45:25 8   SO WHEN MIGRATING A CUSTOMER FROM CISCO TO ARISTA, THE

04:45:31 9   CLI CAN'T BE THE THING THAT MAKES THE CUSTOMER WANT TO MOVE.

04:45:35 10   BUT THERE WILL BE CUSTOMERS, WE HAVE -- WE WILL TALK ABOUT

04:45:39 11   EVIDENCE OF CUSTOMERS, THAT WON'T MOVE BUT FOR THE CLI, THAT

04:45:44 12   THE CLI WOULD BE, WITHOUT THE CLI, THOSE CISCO CUSTOMERS WOULD

04:45:48 13   NOT BE WILLING TO MOVE TO ARISTA

04:45:51 14   Q.   SO IF I UNDERSTAND YOUR TESTIMONY, IF THE CLI'S ARE

04:45:55 15   VIRTUALLY THE SAME BETWEEN TWO COMPANIES, THEN THAT'S NOT A

04:45:59 16   DIFFERENTIATOR?

04:46:00 17   A.   RIGHT. SO IF THAT WAS, YOU KNOW, YOU NEED SOME OTHER

04:46:04 18   REASON FOR CUSTOMERS TO CHOOSE ONE VERSUS THE OTHER.

04:46:07 19   Q.   BUT THE OTHER FLIPSIDE OF THAT TESTIMONY THAT I HEARD,

04:46:10 20   DOCTOR, IS, HOWEVER, IF YOU DIDN'T HAVE A CISCO CLI, THAT

04:46:15 21   DOESN'T MEAN THAT ARISTA WOULD HAVE MADE THE SALE BECAUSE THERE

04:46:17 22   COULD BE OTHER -- THERE COULD BE A STRONG DEMAND OR A

04:46:22 23   CONSIDERATION ON AN OPERATIONAL SIDE FOR HAVING A CISCO-LIKE

04:46:26 24   CLI, IS THAT YOUR TESTIMONY?

04:46:28 25   A.   CORRECT.

04:46:28 1   Q.   AND I WANT TO MAKE SURE THAT THERE'S SOME EVIDENCE IN THE

04:46:31 2   RECORD TO SUPPORT THAT. WE'VE SEEN A LOT OF EVIDENCE. HAVE

04:46:33 3   YOU HEARD SOME TESTIMONY FROM SOME OF THE SENIOR EXECUTIVES

04:46:36 4   FROM ARISTA THAT SUPPORT YOUR ECONOMIC ASSESSMENT OF THIS

04:46:40 5   SITUATION?

04:46:40 6   A.   YES. I'VE HEARD, I'VE ACTUALLY HEARD TESTIMONY, BUT ALSO

04:46:46 7   READ DEPOSITION TESTIMONY TAKEN BEFORE THIS CASE. AND THIS

04:46:51 8   DEPOSITION TESTIMONY, I THINK MAKES THIS POINT STRONGLY.

04:46:56 9   SO, FOR EXAMPLE, MR. SADANA, WHO HAS BEEN HERE IN COURT,

04:47:00 10   IN HIS DEPOSITION WAS ASKED, WITHOUT THE CISCO CLI, YOU WOULD

04:47:06 11   HAVE BEEN ABLE TO SELL TO CUSTOMERS, WOULDN'T YOU? AND

04:47:11 12   MR. SADANA REPLIED, VERY FEW CUSTOMERS.

04:47:15 13   SO MR. SADANA IDENTIFIES THE CISCO-LIKE CLI AS AN

04:47:20 14   IMPORTANT FACTOR IN THE SALES THAT IT MADE.

04:47:24 15   Q.   AND WAS THAT AN IMPORTANT PIECE OF EVIDENCE THAT YOU

04:47:28 16   CONSIDERED IN FORMING YOUR ECONOMIC OPINIONS IN THIS CASE?

04:47:31 17   A.   THAT WAS AN IMPORTANT PIECE OF EVIDENCE, AND IT WAS ECHOED

04:47:35 18   BY DEPOSITION TESTIMONY OF OTHER ARISTA EXECUTIVES.

04:47:42 19   Q.   AND LET'S TAKE A LOOK NOW TO THE CALCULATIONS THAT YOU

04:47:46 20   DID, DR. CHEVALIER. SO LOOKING AT THE SLIDE 23 --

04:47:46 21   (OFF-THE-RECORD DISCUSSION.)

04:47:58 22   BY MR. PAK:

04:47:58 23   Q.   OH, SORRY. MR. NELSON REMINDED ME THAT THE THREE EXAMPLES

04:48:03 24   ON SLIDE 20 -- SO LET'S QUICKLY GO BACK TO SLIDE 20 -- I DID

04:48:08 25   NOT MOVE INTO EVIDENCE YET.

04:48:09 1   SO OUR EXHIBITS 239-A, 158 AND 236, DOCUMENTS PRODUCED BY

04:48:18 2   ARISTA THAT YOU RELIED UPON IN FORMING YOUR ECONOMIC OPINIONS

04:48:21 3   IN THIS CASE?

04:48:28 4   A.   239-A. YEP. SORRY, GIVE ME THE SECOND NUMBER AGAIN,

04:48:33 5   PLEASE.

04:48:34 6   Q.   158.

04:48:36 7   A.   I'M HOPING TO GET THAT IN FRONT OF US. YEP.

04:48:42 8   Q.   AND 236.

04:48:48 9   A.   YEP.

04:48:50 10 Q.   OKAY.

04:48:51 11 A.   YES.

04:48:52 12   MR. PAK: I WOULD LIKE TO MOVE THOSE THREE EXHIBITS

04:48:54 13 INTO EVIDENCE YOUR HONOR.

04:48:55 14   MR. SILBERT: NO OBJECTION.

04:48:56 15   THE COURT: THEY WILL ALL BE ADMITTED.

04:48:12 16   (PLAINTIFF'S EXHIBITS 239-A, 158 AND 236 WERE ADMITTED

04:48:57 17 INTO EVIDENCE.)

04:48:57 18 BY MR. PAK:

04:48:58 19 Q.   SO WITH THAT, LET'S TALK ABOUT YOUR CALCULATIONS. AT A

04:49:01 20 HIGH LEVEL, DR. CHEVALIER, WHAT ARE THE STEPS YOU FOLLOWED IN

04:49:04 21 ACTUALLY CALCULATING OR QUANTIFYING THE AMOUNT OF PROFITS THAT

04:49:08 22 CISCO LOST AS A RESULT OF ARISTA'S COPYRIGHT INFRINGEMENT?

04:49:12 23 A.   OKAY. SO HERE'S THE PROCESS. SO THE FIRST STEP IS WE'VE

04:49:18 24 GOT TO FIGURE OUT THE SALES THAT ARISTA MADE DUE TO THE

04:49:22 25 INFRINGEMENT; RIGHT?

04:49:23 1   SO SEPARATE OUT THE SALES THAT ARISTA WOULD HAVE MADE

04:49:27 2   WITHOUT THE INFRINGEMENT AND FIND THE SALES THAT CISCO --

04:49:30 3   ARISTA, I'M SORRY, WOULD HAVE MADE, ONLY MADE DUE TO THE

04:49:33 4   INFRINGEMENT.

04:49:34 5   AND THEN THE SECOND STEP IS SOME OF THOSE SALES THAT

04:49:39 6   ARISTA MADE DUE TO THE INFRINGEMENT ARE SALES THAT THEN WOULD

04:49:45 7   HAVE BEEN MADE BY CISCO.

04:49:46 8   AND SO WE ARE GOING TO REMEMBER DID THE SHARE, THE

04:49:49 9   PERCENTAGE OF ARISTA SALES DUE TO THE INFRINGEMENT THAT WOULD

04:49:52 10   HAVE BEEN MADE BY CISCO IF THERE WAS NO INFRINGEMENT.

04:49:57 11   AND THEN LASTLY, ONCE WE'VE FIGURED OUT THOSE CISCO SALES,

04:50:03 12   CALCULATE WHAT CISCO'S PROFITS WOULD HAVE BEEN ON THOSE SALES.

04:50:06 13   Q.   OKAY. SO LET'S WALK THROUGH THOSE STEPS ONE BY ONE AND

04:50:11 14   DEMONSTRATE TO THE JURY THE ECONOMIC ANALYSIS THAT YOU DID.

04:50:13 15   SO THESE ARE THE STEPS, I TAKE IT, THAT YOU FOLLOWED.

04:50:17 16   A.   YES. THIS IS JUST KIND OF A MATH VERSION OF WHAT THE

04:50:20 17   PREVIOUS SLIDE SAID.

04:50:22 18   Q.   OKAY.

04:50:22 19   A.   OKAY. SO WE ARE GOING TO START WITH ARISTA'S TOTAL SWITCH

04:50:26 20   REVENUES, ESTABLISH THE PERCENT OF THOSE SWITCH REVENUES OR

04:50:33 21   SALES ELIGIBLE FOR LOST PROFITS. SO THOSE ARE THE -- AND THAT

04:50:37 22   GIVES US THE ADJUSTED ARISTA SWITCH REVENUES.

04:50:40 23   Q.   AND WHY DID YOU MAKE THAT ADJUSTMENT?

04:50:42 24   A.   OKAY. BECAUSE AS WE'VE ALREADY DISCUSSED, ARISTA WOULD

04:50:49 25   HAVE MADE SOME SALES, EVEN IF IT DIDN'T HAVE THE INFRINGING

04:50:53 1   CLI. SO WE ARE GOING TO HAVE TO QUANTIFY, YOU KNOW, WHAT

04:50:57 2   FRACTION. BUT IT'S ONLY THE SALES THAT THEY WOULDN'T HAVE MADE

04:51:01 3   THAT ARE ELIGIBLE FOR LOST PROFITS.

04:51:04 4   Q.   AND TO ARRIVE AT THAT ADJUSTMENT. SO, THAT IS, YOU ARE

04:51:07 5   TAKING SOME OF THE MONEY OR THE REVENUES OFF THE TABLE, OR THE

04:51:11 6   PROFITS OFF THE TABLE, AND NOT INCLUDING IT IN YOUR DAMAGES

04:51:15 7   MODEL; IS THAT CORRECT?

04:51:16 8   A.   RIGHT.

04:51:16 9   Q.   OKAY. SO MAKING THAT ADJUSTMENT, WHAT EVIDENCE DID YOU

04:51:20 10   CONSIDER IN TRYING TO COME UP WITH A NUMBER THAT YOU THINK IS A

04:51:23 11   REASONABLE APPROXIMATION?

04:51:25 12   A.   OKAY. SO THIS IS TESTIMONY FROM JUST THIS WEEK, AND IT IS

04:51:33 13   FROM KEN DUDA, THE CTO. AND WE HAVE ALREADY HEARD THE

04:51:42 14   TESTIMONY FROM MR. SADANA THAT WAS ECHOED BY OTHER CISCO

04:51:45 15   EXECUTIVES, THAT ACTUALLY ARISTA WOULD HAVE MADE VERY FEW SALES

04:51:50 16   BUT FOR THE VERY CLOSE COPY OF ITS CLI TO CISCO.

04:51:57 17   BUT I DIDN'T -- YOU KNOW, BUT VERY FEW OR ALMOST ALL THE

04:52:02 18   SALES THAT DIDN'T SEEM QUITE CONSERVATIVE ENOUGH.

04:52:06 19   SO MR. DUDA HERE SAID, "AND YOU'VE SAID THAT YOU DON'T

04:52:11 20   HAVE TO USE THE CLI IF YOU DON'T WANT TO, THE NATIVE LINUX

04:52:14 21   INTERFACES ARE ALL THERE, AND ABOUT 20 PERCENT OF OUR CUSTOMERS

04:52:18 22   ADOPT -- "

04:52:18 23   THE COURT: HOLD ON. SOMEONE IS WRITING THIS DOWN.

04:52:21 24   THE WITNESS: OH, I'M SORRY. YOU ARE CORRECT.

04:52:23 25   SORRY. LET ME SLOW DOWN.

04:52:25 1   SO THIS WAS THE QUESTION HE WAS ASKED IN COURT.

04:52:28 2   "QUESTION: AND YOU'VE SAID THAT YOU DON'T HAVE TO

04:52:30 3   USE THE CLI IF YOU DON'T WANT TO, THE NATIVE LINUX INTERFACES

04:52:34 4   ARE ALL THERE, AND ABOUT 20 PERCENT OF OUR CUSTOMERS ADOPT A

04:52:37 5   PURE LINUX APPROACH; YOU'VE SAID THOSE THINGS, CORRECT?

04:52:42 6   "ANSWER: I DID."

04:52:45 7   AND THAT'S CONSISTENT WITH OTHER TESTIMONY THAT HE'S

04:52:48 8   GIVEN, FOR EXAMPLE, IN HIS DEPOSITION.

04:52:50 9   AND SO IF ARISTA DIDN'T HAVE THE CISCO CLI, ONE OPTION

04:52:56 10   THAT ARISTA WOULD HAVE WOULD BE TO HAVE PURE LINUX INTERFACES.

04:53:02 11   AND MR. DUDA SUGGESTS THAT 20 PERCENT OF CUSTOMERS

04:53:07 12   ACTUALLY USE THAT.

04:53:10 13   THERE'S OTHER TESTIMONY THAT SUGGESTS, YOU KNOW, THAT, YOU

04:53:13 14   KNOW, THEY DON'T -- 100 PERCENT USE THE LINUX INTERFACES, THEY

04:53:17 15   INTERACT WITH THE CLI, BUT THOSE 20 PERCENT OF CUSTOMERS WOULD

04:53:21 16   BE A BASIS FOR A GOOD ESTIMATE OF CUSTOMERS WHO WOULD STILL BUY

04:53:27 17   ARISTA SWITCHES, EVEN IF ARISTA SWITCHES COULDN'T INFRINGE THE

04:53:33 18   CISCO CLI.

04:53:33 19   Q.   SO YOU TOOK 20 PERCENT OF THE PROFITS OFF THE TABLE, YOU

04:53:37 20   SAID?

04:53:37 21   A.   I TOOK 20 PERCENT OF ARISTA'S SALES OFF THE TABLE.

04:53:40 22   Q.   OKAY. AND THEN NOW WE ARE GOING TO GET TO THE BUT FOR

04:53:44 23   MARKET SHARE PART OF THE ANALYSIS. AND WHAT EVIDENCE DID YOU

04:53:47 24   CONSIDER IN THINKING ABOUT BUT-FOR CAUSATION?

04:53:52 25   A.   OKAY. SO JUST TO -- THAT -- THE MATH SLIDE WENT BY

04:53:57 1   QUICKLY. SO WE'VE GOT THE PERCENT OF SWITCH SALES ELIGIBLE FOR

04:54:00 2   LOST PROFITS GETS US TO ADJUSTED ARISTA SWITCH REVENUES. NOW,

04:54:05 3   SOME OF THOSE WILL FLOW TO CISCO. SO THIS CISCO BUT FOR MARKET

04:54:09 4   SHARE IS WHAT FRACTION OF THOSE WOULD FLOW TO CISCO.

04:54:12 5   AND SO THERE'S LOTS OF EVIDENCE -- SORRY. NOW WE CAN

04:54:16 6   CHANGE THE SLIDE. THERE'S LOTS OF EVIDENCE THAT CISCO AND

04:54:19 7   ARISTA ARE THE CLOSEST MOST DIRECT COMPETITORS, WHICH SUGGESTS

04:54:23 8   A LOT OF ARISTA SALES WOULD FLOW TO CISCO, AND THAT'S WHAT THIS

04:54:27 9   EVIDENCE SPEAKS TO.

04:54:29 10   SO THIS IS A DOCUMENT. IT IS AN ARISTA CONFIDENTIAL

04:54:33 11   FINANCIAL SUMMARY. IT'S A STATEMENT ABOUT ARISTA'S FINANCES.

04:54:40 12   AND IN THE COMPETITION SECTION IT SAYS, OUR SINGLE MOST

04:54:44 13   IMPORTANT COMPETITOR IS CISCO SYSTEMS.

04:54:46 14   Q.   AND DID YOU CONSIDER EXHIBIT 626 IN FORMING YOUR ECONOMIC

04:54:50 15   OPINIONS IN THIS CASE?

04:54:51 16   A.   YES, I DID.

04:54:53 17   MR. PAK: AND, YOUR HONOR, I WOULD LIKE TO MOVE

04:54:55 18   EXHIBIT 626 INTO EVIDENCE.

04:54:56 19   THE COURT: ANY OBJECTION?

04:54:57 20   MR. SILBERT: NO OBJECTION.

04:54:58 21   THE COURT: IT WILL BE ADMITTED.

04:55:00 22   (PLAINTIFF'S EXHIBIT 626 WAS ADMITTED INTO EVIDENCE.)

04:55:00 23   BY MR. PAK:

04:55:00 24   Q.   AND THEN LET'S LOOK AT SOME ADDITIONAL EVIDENCE OF BUT FOR

04:55:06 25   CAUSATION. AND IF YOU COULD EXPLAIN, SLOWLY, SLIDE 27. COULD

04:55:09 1   YOU WALK US THROUGH THE TWO PIECES OF EVIDENCE ON THAT SLIDE?

04:55:13 2   A.   OKAY.   SO THESE PIECES OF EVIDENCE ARE BOTH FROM

04:55:16 3   SECURITIES ANALYSTS.   SO SECURITIES ANALYSTS ARE COMPANIES THAT

04:55:20 4   PROVIDE ANALYSIS OF OTHER COMPANIES TO HELP INVESTORS MAKE

04:55:26 5   DECISIONS, AND THESE TWO SECURITY ANALYSTS BOTH TALK ABOUT THE

04:55:30 6   VERY DIRECT COMPETITION BETWEEN ARISTA AND CISCO.

04:55:33 7   SO, FOR EXAMPLE, IN THE TOP ONE, JEFFREY SAYS, ARISTA WILL

04:55:37 8   COMPETE WITH CISCO ON VIRTUALLY EVERY DEAL IT SEES.

04:55:41 9   AND NATURALLY CISCO PRESENTS THE MOST SIGNIFICANT

04:55:44 10   COMPETITIVE THREAT FOR ARISTA.

04:55:48 11   THE LOWER ONE FROM BARCLAYS SAYS, FROM THE OUTSET,

04:55:52 12   ARISTA'S STRATEGY HAS BEEN FAIRLY STRAIGHTFORWARD, TAKE SHARE

04:55:57 13   FROM CISCO.

04:55:58 14   SO THESE INVESTOR REPORTS SUGGEST THAT MANY SALES, IF

04:56:03 15   ARISTA WASN'T MAKING A SALE, MANY, MANY OF THOSE SALES WOULD

04:56:09 16   FLOW TO CISCO.

04:56:10 17   MR. PAK: OKAY.   AND I WOULD LIKE TO MOVE EXHIBIT 691

04:56:13 18   AND 4259 INTO EVIDENCE?

04:56:15 19   MR. SILBERT: NO OBJECTION.

04:56:15 20   THE COURT: THEY WILL BE ADMITTED.

04:56:15 21   (PLAINTIFF'S EXHIBITS 691 AND 4259 WERE ADMITTED INTO

04:56:17 22   EVIDENCE.)

04:56:17 23   BY MR. PAK:

04:56:18 24   Q.   AND THEN ONE LAST PIECE OF EVIDENCE HERE ON SLIDE 28,

04:56:24 25   LOOKING AT EXHIBIT 237.   CAN YOU TELL US THE SIGNIFICANCE OF

04:56:27   1   THIS DOCUMENT?

04:56:29   2   A.   OKAY. SO, AGAIN, THIS SPEAKS TO THIS, THE EXTENT TO WHICH

04:56:33   3   CISCO AND ARISTA ARE THE CLOSEST OF COMPETITORS. THIS IS A

04:56:37   4   DOCUMENT THAT'S KIND OF A SALES TRAINING DOCUMENT WHERE ARISTA

04:56:42   5   HAS SCRIPTS WHEREBY ITS SALES PEOPLE CAN MAKE PITCHES.

04:56:48   6   AND THIS ONE IS, SAYS, OKAY, IF THE CUSTOMER SAYS, WHERE

04:56:55   7   WE'RE A CISCO SHOP, THE PITCH IS THAT'S GREAT, ALMOST

04:56:59   8   100 PERCENT OF OUR CUSTOMER BASE IS COMPRISED OF LARGE CISCO

04:57:04   9   SHOPS.

04:57:05   10   AND THEN I NOTE THAT THIS ONE ALSO HAS SOME STATEMENTS

04:57:07   11   ABOUT, YOU CAN THEN EMPHASIZE TO THE CUSTOMERS THAT OUR

04:57:10   12   PRODUCTS ARE COMPATIBLE WITH CISCO IN A NONPROPRIETARY MANNER

04:57:14   13   AND OUR CLI IS CISCO-LIKE AND WILL NOT REQUIRE ANY TRAINING ON

04:57:18   14   YOUR PART.

04:57:18   15   SO, AGAIN, THIS SUGGESTS THAT CISCO IS THE MOST IMPORTANT

04:57:24   16   COMPETITOR, AND THEY ARE MOSTLY VIEWING THEMSELVES AS TAKING

04:57:28   17   BUSINESS FROM LARGE CISCO SHOPS.

04:57:29   18   MR. PAK: I WOULD LIKE TO ADMIT INTO EVIDENCE,

04:57:35   19   YOUR HONOR, EXHIBIT 237.

04:57:36   20   THE COURT: IT WILL BE ADMITTED.

04:57:38   21   MR. VAN NEST: NO OBJECTION.

04:57:41   22   (PLAINTIFF'S EXHIBIT 237 WAS ADMITTED INTO EVIDENCE.)

04:57:41   23   BY MR. PAK:

04:57:43   24   Q.   AND THEN THE LAST SLIDE IS 29.

04:57:47   25   COULD YOU PLEASE EXPLAIN TO THE JURY WHAT TYPE OF ANALYSIS

04:57:50 1   YOU WERE DOING WITH THESE PIE CHARTS HERE.

04:57:52 2   A.   SURE.   OKAY.   SO WE'VE SEEN EVIDENCE THAT A LOT OF SALES,

04:57:57 3   IF ARISTA DIDN'T MAKE THEM OR COULDN'T MAKE THEM, WOULD GO TO

04:58:01 4   CISCO, BUT ACTUALLY FOR THE PURPOSES OF DOING MY ECONOMIC

04:58:04 5   ANALYSIS, I USED A SOMEWHAT MORE CONSERVATIVE ASSUMPTION WHICH

04:58:12 6   IS VERY COMMONLY DONE IN INTELLECTUAL PROPERTY CASES.

04:58:15 7   AND SO WHAT THIS DOES IS IN THE LEFT PIE CHART, YOU CAN

04:58:18 8   THINK ABOUT THE ACTUAL MARKET SHARES, THEY ACTUALLY VARY OVER

04:58:22 9   TIME, AND THERE'S MORE DETAILS, BUT THIS ILLUSTRATES THE IDEA

04:58:26 10   THAT THE MARKET SHARES OF THE PARTICIPANTS IN THE MARKET, AND

04:58:29 11   YOU CAN SEE THAT ARISTA IS IN BLUE, AND IT KEEPS 20 PERCENT OF

04:58:35 12   ITS SALES.

04:58:36 13   Q.   THAT'S THE SOLID BLUE?

04:58:37 14   A.   THAT'S THE SOLID BLUE.   AND THEN THE KIND OF GHOST PART,

04:58:41 15   THE DOTTED PIECE, THAT IS THE PART THAT ARISTA WON'T SELL

04:58:44 16   WITHOUT THE INFRINGEMENT, BASED ON OUR PRIOR ANALYSIS.

04:58:47 17   AND WE DON'T ACTUALLY JUST ALLOCATE ALL OF THAT, I DON'T

04:58:50 18   ACTUALLY JUST ALLOCATE ALL OF THAT TO CISCO.   IN FACT, I

04:58:54 19   ALLOCATE IT TO CISCO IN PROPORTION TO CISCO'S ACTUAL SHARE IN

04:59:00 20   THE MARKET.

04:59:01 21   AND SO YOU CAN SEE ON THE RIGHT THAT IT'S TAKING THE

04:59:05 22   MARKET WITH ARISTA OUT, AND CISCO GETS THE SHARE THAT REFLECTS

04:59:10 23   ITS SHARE VERSUS THESE OTHER COMPETITORS.

04:59:13 24   SO WE'RE ASSUMING THAT WHEN ARISTA DOESN'T, CAN'T SELL

04:59:17 25   SOME UNITS, JUNIPER, DELL, BROCADE, AND OTHERS END UP MAKING

04:59:23 1   SOME OF THOSE SALES, AND CISCO MAKES SALES PROPORTIONAL TO ITS

04:59:28 2   MARKET SHARE.

04:59:28 3   Q.   OKAY. AND I THINK WE ARE GETTING VERY CLOSE TO THE LOST

04:59:32 4   PROFITS CALCULATION NOW. SO IF WE GO TO --

04:59:34 5   THE COURT: SO CLOSE AS IN ONE OR TWO MINUTES? WE

04:59:37 6   ARE NOT STAYING LATE TODAY.

04:59:38 7   MR. PAK: NO, NO, OF COURSE NOT. AND WE WILL PICK IT

04:59:41 8   UP IN THE MORNING ON MONDAY, BUT I WOULD NEVER KEEP YOU PAST

04:59:45 9   5:00 ON A FRIDAY.

04:59:47 10   THE WITNESS: OKAY. BUT I WON'T JUST TALK FAST.

04:59:49 11   BY MR. PAK:

04:59:49 12   Q.   YES. SO WE ARE GOING TO INTRODUCE SOME OF THE CONCEPTS

04:59:52 13   AND THEN WE CAN ALWAYS PICK UP ON MONDAY, BUT TAKE YOUR TIME,

04:59:56 14   DR. CHEVALIER.

04:59:56 15   SO ON SLIDE 30, WE ARE DOWN TO THE LAST STEP OF

04:59:59 16   MULTIPLYING THE PROFIT MARGIN.

05:00:02 17   A.   OKAY. SO WE DID THIS CISCO BUT-FOR MARKET SHARE WHICH GOT

05:00:07 18   US TO CISCO'S LOST PROFITS REVENUES, BUT THAT'S REVENUES, WE

05:00:16 19   ARE THINKING ABOUT LOST PROFITS, SO IN ORDER TO GET FROM

05:00:18 20   REVENUES TO LOST PROFITS, WE NEED TO KNOW CISCO'S PROFIT

05:00:22 21   MARGIN. SO WHAT SHARE OF CISCO'S REVENUES DOES IT KEEP AS

05:00:27 22   PROFIT.

05:00:27 23   Q.   SO WHEN WE GET TO THAT -- AGAIN, WE ARE GOING TO SPEND A

05:00:30 24   LOT MORE TIME DISCUSSING THIS ON MONDAY. BUT JUST AT A HIGH

05:00:36 25   LEVEL, WHEN YOU DO THESE CALCULATIONS LOOKING AT THE MARKET

05:00:39 1   SHARE, WHAT WAS THE TOTAL LOST PROFITS TO CISCO BASED ON YOUR

05:00:46 2   CALCULATIONS THAT YOU DID FOR THE RANGE OF TIME THAT WE ARE

05:00:50 3   TALKING ABOUT?

05:00:50 4   A.   OKAY. SO THERE ARE TWO DIFFERENT DATA SOURCES. SO JUST

05:00:55 5   CHECK BOTH FOR ROBUSTNESS AND THOSE GENERATE CISCO'S LOST

05:00:59 6   PROFITS OF BETWEEN $310 MILLION AND $335 MILLION.

05:01:06 7   MR. PAK: SO WITH THAT, YOUR HONOR, WE WILL SUSPEND

05:01:09 8   THE TESTIMONY FOR TODAY, AND WE WILL RESUME ON MONDAY.

05:01:11 9   THE COURT: OKAY. THANK YOU.

05:01:12 10   THANK YOU, DR. CHEVALIER.

05:01:14 11   ALL RIGHT. LADIES AND GENTLEMEN, WE'VE REACHED THE END OF

05:01:16 12   THE DAY AND THE WEEK. LEAVE ME YOUR NOTEBOOKS AND YOUR BADGES,

05:01:20 13   AND WE WILL RESUME ON MONDAY MORNING AT 9:00 A.M.

05:01:22 14   LET ME REMIND YOU, YOU AREN'T TO FORM OR EXPRESS ANY

05:01:26 15   OPINIONS IN THE CASE OR DO ANY RESEARCH OR INVESTIGATION. HAVE

05:01:30 16   A NICE WEEKEND. I WILL SEE YOU MONDAY MORNING.

05:01:33 17   (JURY OUT AT 5:01 P.M.)

05:02:04 18   THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

05:02:06 19   IS THERE ANY HOUSEKEEPING FOR TONIGHT?

05:02:08 20   MR. PAK: I DON'T BELIEVE SO, YOUR HONOR.

05:02:10 21   THE COURT: EVERYONE WANTS TO BE OUT.

05:02:13 22   MR. VAN NEST: I DON'T BELIEVE SO, YOUR HONOR.

05:02:15 23   THE COURT: EXCELLENT. I WILL SEE YOU ALL AT 8:30

05:02:18 24   MONDAY MORNING.

05:02:18 25   MR. VAN NEST: YES, YOU WILL. THANK YOU SO MUCH.
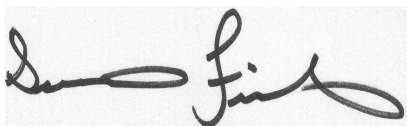
CHEVALIER DIRECT BY MR. PAK   1587

05:02:24   1   (THE EVENING RECESS WAS TAKEN AT 5:02 P.M.)

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4   **CERTIFICATE OF REPORTER**

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8   I, THE UNDERSIGNED OFFICIAL COURT

9   REPORTER OF THE UNITED STATES DISTRICT COURT FOR

10   THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH

11   FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY

12   CERTIFY:

13   THAT THE FOREGOING TRANSCRIPT,

14   CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND

15   CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS

16   SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS

17   HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED

18   TRANSCRIPTION TO THE BEST OF MY ABILITY.

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24   _____

25   SUMMER A. FISHER, CSR, CRR
     CERTIFICATE NUMBER 13185   DATED: 12/2/16

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